This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

BREACH OF PROMISE

MacCOLLA

Cw. U.K.
X 520
M 129

CW .U .K .
X520
M 129

L. Eng. C. 28 e.
Breach of promise 1.

BREACH OF PROMISE

" THE FAERY QUEENE
Book 6; Canto xi.

Verse I.

" The joys of love, if they should ever last
Without affliction or disquietnesse,
That worldly chaunces doe amongst them cast,
Would be on earth too great a blessednesse,
Liker to heaven then mortall wretchednesse.
Therefore the winged God to let men weet,
That here on earth is no sure happinesse.
A thousand sowres hath tempred with one sweet
To make it seeme more deare and dainty, as is meet."

—SPENSER.

"What causes young people to 'come out' but the noble ambition of matrimony? What sends them trooping to watering-places? What keeps them dancing till five o'clock in the morning through a whole mortal season? What causes them to labour at pianoforte sonatas, and to learn four songs from a fashionable master at a guinea a lesson, and to play the harp if they have handsome arms and neat elbows, and to wear Lincoln Green toxophilite hats and feathers, but that they may bring down some 'desirable' young men with those killing bows and arrows of theirs?"

—THACKERAY.

BREACH OF PROMISE

ITS HISTORY

AND

SOCIAL CONSIDERATIONS

TO WHICH ARE ADDED A FEW PAGES ON THE
LAW OF BREACH OF PROMISE

AND

A GLANCE AT MANY AMUSING CASES

SINCE THE REIGN OF QUEEN ELIZABETH

BY

CHARLES J. MacCOLLA

LONDON
PICKERING & CO., 196 PICCADILLY
1879

Printed by Porteous & Denholm, Edinburgh

TO

FARRER HERSCHELL, ESQUIRE, Q.C., M.P.

RECORDER OF CARLISLE

THIS HUMBLE ATTEMPT

TO ILLUSTRATE THE TRUE PHASES OF

A GREAT SOCIAL QUESTION

WHICH, IN HIS ZEAL FOR THE WELFARE OF OUR COUNTRY, HE

HAS SO ABLY SHOWN TO THE HOUSE OF COMMONS

IS

BY PERMISSION

MOST RESPECTFULLY INSCRIBED

PREFACE

A HETEROGENEOUS mass is disclosed under the auspices of the Action of Breach of Promise of Marriage. Wounded feelings! Loss of position! Marital disunion! Extortion! Damages!—these are the ingredients of this social mixture.

Our legislative physicians are in doubt as to the efficacy of their medicine, and they differ but little in this respect from a few medical men, perhaps, of the reader's own acquaintance.

The patient sufferers, the unfortunate public have also, it is needless to add, but little confidence in the beneficial results of the mixture. Experience shows that by taking the dose a part of the body is certainly benefited, while the greater part is injured, sometimes beyond remedy. Hence it is that two subjects, paramount in importance, both dealing with the social welfare of our country, are now among those uppermost in the public mind. They affect all sorts and conditions of men. No marvel, therefore, that so much interest has, during recent years, attached to the Action of Breach of Promise of Marriage, and to the question of Marriage with a Deceased Wife's Sister.

The altered condition of society has necessitated agitation on these questions throughout the length and breadth of England; and it is by no means

improbable that a few years hence will witness a complete change in the existing marriage laws.

A partial change, intended for the special benefit and protection of the weaker sex, was well commenced in the year 1870, and subsequently continued by Acts of Parliament passed in the years 1874 and 1878. These were, so to speak, but tardy declarations that a wife is not her husband's slave, a dependent upon his will, and are but the precursors of greater and much needed changes.

Parliament has been considering whether the Action of Breach of Promise should be abolished: the right of action is certainly threatened. Some characterise it as a bugbear to society, often a means of extortion, and a machine for the display of avarice on the part of hungry spinsters and designing widows of the Bardell type (sentiments, perhaps, of ruthless men, or invectives of a fair one against the doings of her own sex; for the poet tells us, "Woman's enemy is woman"). It is added that these actions at times induce the most inconstant and hopeless marriages, which culminate in crime and social misery.

On the other hand, the action is very forcibly defended. These are the views of fair and other supporters and opponents, who may themselves one day be plaintiffs or defendants in the action and appeal to a British jury, with tales more or less interesting recording their hymeneal woes.

There is, then, a great diversity of opinion on a question of vital importance to society. Its evils are being weighed with its advantages, and the maxim, "*Salus populi suprema lex*," must support or end its existence. Since the welfare of the majority must rise superior to that of the minority, individual cases

of hardship must remain to the end of time unredressed, succumbing to the supreme law — the public welfare.

In this small book I have endeavoured to sketch the History and the Law of Breach of Promise of Marriage, and have added some social considerations, with cases decided since Queen Elizabeth's reign, coloured perhaps with a few rays of humour, but "chastised by sabler tints of woe." Throughout I have had the twofold object of affording some useful information and occasional interest to those who may wish—or perhaps be obliged—to know the effect of an Action of Breach of Promise of Marriage.

It may be well—though perhaps needless—to add that Mr Herschell is in no way responsible for the contents of this little book. As the Dedication might leave this in doubt, mention is made of the fact.

A generous and considerate public must determine how far my efforts merit success, bearing in mind that many errors and omissions may in some measure be palliated by the fact that this is the first book on Breach of Promise.

C. J. M.

22 CHANCERY LANE

CONTENTS

PAGE

HISTORY OF BREACH OF PROMISE.—Its existence before the Christian era, and during Queen Elizabeth's reign—The Precontract and its iniquities—Clandestine Marriages considered in relation thereto—Plaintiff and Defendant witnesses on the Trial only since 1869—Concluding with comments on Bardell *v.* Pickwick - 1

LAW.—Nature of the Action—Infants' Promises not binding—Writing unnecessary—Fraud—Conditional Promises by married men and others—Wounded Feelings and Damages—Corroborative Evidence—The Law in France, Italy, Austria, Germany, and America - 17

SOCIAL CONSIDERATIONS.—Love and Law wedded—their progeny—Bachelors, Spinsters, and Caprice—The Shark, Pilot-fish, and Parasites (an Analogy)—Debate in Parliament—Arguments *pro* and *contra*—"The Lovers' Leap" - - - - 33

HUMOROUS CASES.—Damages against a dead man — The Widower and the Ancient Spinster—Love among the Fishes—Precocious Infants—concluding with a case illustrating the principle of restricting the action to actual pecuniary loss - - - 64

APPENDIX.—Dickison *v.* Holcroft - - - 90

LIST OF ABBREVIATIONS

B.R. - - -	Banco Regis.
Beav. - - -	Beavan's Reports.
Bing. N.C. - -	Bingham's New Cases.
Blac. Com. - -	Blackstone's Commentaries.
C.B. - -	Common Bench Reports.
C.B. N.S. - -	Common Bench Reports, New Series.
C. & P. - -	Carrington & Payne's Reports.
Car. & Kirw. - -	Carrington & Kirwan's Reports.
Caus. - - -	(Roman Canon Law: Causes.)
Ch. R. - - -	Chancery Reports.
Com. - - -	Comyns' Reports.
Cro. - - -	Croke's Reports, Vol. II.
E.B. & E. - -	Ellis, Blackburn, & Ellis.
E.T. - - -	Easter Term.
Esp. - - -	Espinasse's Cases.
Exch. - - -	Exchequer.
Hare - - -	Hare's Reports.
L.J. C.P. - -	*Law Journal*, Common Pleas.
L.J. Exch. - -	*Law Journal*, Exchequer.
L.J. Q.B. - -	*Law Journal*, Queen's Bench.
L.R. C.P.D. -	Law Reports, Common Pleas Division.
L.R. Ex. - -	Law Reports, Exchequer.
L.R. Q.B. - -	Law Reports, Queen's Bench.
L.T. N.S. - -	*Law Times*, New Series.
Lev. R. - - -	Levinz's Reports.
Ld. Raym. - -	Lord Raymond's Reports.
M. & S. - -	Maule & Selwyn's Reports.
M. & W. - -	Meeson & Welsby's Reports.
Mod. - - -	Modern Reports.
Peake Add. C. -	Peake's Additional Cases.
Q.B. - - -	Queen's Bench Cases (Adolphus & Ellis).
Raymond, Ld. -	Lord Raymond's Reports.
Raymond, Sir T. -	Sir Thomas Raymond's Reports.
Salk. - - -	Salkeld's Reports.
Sc. - - -	Scott's Common Bench Reports.
Sir T. Raym. - -	Sir T. Raymond's Reports.
Spel. - - -	Spelman's Glossary.
Str. - - -	Strange's Reports.
Vern. - - -	Vernon's Reports.

BREACH OF PROMISE

ITS HISTORY

THE action of breach of promise has existed in England for nearly three centuries: one of the earliest cases being that of Palmer *v.* Wilder,* tried in the reign of Queen Elizabeth, when it was decided that for the value of the marriage, tender was not requisite. Prior to this reign no action appears to have been brought to obtain compensation for a breach of promise; that is to say, the history of English law is silent on the subject. But it is certainly not, as was supposed by some honourable members in the House of Commons, on May 6th, 1879 (when the subject elicited a very animated debate), "a comparatively modern innovation and a peculiarity of our English jurisprudence." For many centuries before the Christian era this right of action existed in Latium and elsewhere. Aulus Gellius, in his work entitled *Noctes Atticæ*, iv. 4, says that either party had a right of action for breach of the "sponsio," which was a formal contract for a marriage made between the father of the intending bride and the intending husband.

---

* 2 Cro. Rep. 66.

It does not appear that any such action lay during the classical period of Roman law. During this period the contract of betrothal seems to have been a free one.* The Romans, regarding such an action as *contra bonos mores*, and unbecoming a woman, would not even give effect to a stipulation fixing beforehand the sum to be paid as penalty in case of non-performance of the contract. "Inhonestum visum est vinculo-pœnæ matrimonia obstringi," says Paulus —Dig. 45, i., l. 134, cf. Cod., 5, l., 1. The only penalties attaching to the breach of betrothal promise (repudium) were the obligation on the party who had broken it without sufficient cause to restore any gifts received by way of earnest ("arrhæ," as they were called), and a stigma of *infamia* attached to such person who, while affianced to one woman, betrothed himself to another. In the present day and generation it is but too evident that such a stigma of *infamia* would be of no effect whatever; and supporters of the right of action for breach of promise may well ask what is to be substituted in place of the Roman stigma as a wholesome check to the tendency of men of the present day?

But the most important reason why actions for breach of promise of marriage were not permitted during the time of the Romans may perhaps be attributed to their marriage laws. They permitted mar-

* The common way of betrothings was by writings drawn up by consent and sealed by both parties—

Si tibi legitimis pactam junctamque tabellis
Non es amaturus. *Juvenal, Sat.* 6.

——— Veinet cum signatoribus auspex. *Sat.* 10;

and it was customary thereafter for the man to send a ring as a pledge to the woman. In Pliny's time such ring used to be of iron without any stone in it.—Pliny, N. H. Lib. 33, cap. I.

riages to be dissolved at the will of either party. Under such circumstances it would have been vain for an action of breach of promise to be brought, as, in the great majority of cases, the promiser could have freed himself from the liabilities of such an action (if there had been one) by marrying, and immediately dissolving the marriage. Thus there would have been marriages performed but unconsummated, and the evils then sanctioned, viz., the dissolution of marriages at the will of either party, would have been greatly augmented.

As in England the marriage tie can only be dissolved with extreme difficulty, it becomes of great importance to know whether in some cases, by reason of the right of action for breach of promise, semi-compulsory marriages arise. If, for example, there be cases where the party threatened with such an action marries the person who threatens him, in order to avoid the consequences of a breach of promise (heavy pecuniary damages), then society is demoralised, and the law which permits such an action to be held *in terrorem* over the head of the unwilling party to the marriage, creates and fosters a crime of no small magnitude. These and other considerations, which the action of breach of promise of marriage suggests, must be postponed for the present.

In the reign of Queen Elizabeth an action was brought by a man, who alleged that the woman gave him flattering words equal to a promise of marriage, that therefore he delivered to her money and other things, and that afterwards the woman married another man, in deceit and fraud of the plaintiff. This action, though taking the form of an action of breach of promise of marriage, might well have been

an action for obtaining the money and other things by fraud or false pretences. However, it is an illustration of an action for breach of promise in those times. Another case of this description was brought in the same reign by the father of a young gentleman against a person who had injured his son:—"For that on the 1st May in the 28th Elizabeth, he *vi et armis* strook him with a Spade upon his back, by which he became decrepit and lame, by reason whereof he lost his marriage, and could not marry him as before, to his damages £200."

Throughout Europe down to the middle of the sixteenth century marriage was regarded as a *consensual** contract, which could be completed without ecclesiastical intervention.

De Burgh (an authority of great weight in the fourteenth century) tells us that it was only with a view to prevent great improprieties and indecencies, and to better secure order, that the Church recommended its children to employ a priest in the celebration of the contract of marriage, but that it was not imperative to do so. The absence of the sacerdotal ceremony or office, or of a person clothed in holy orders, was not a bar to the parties themselves administering the sacrament of marriage each to the other. However, in or about the year 1563, a complete change was made throughout the Continent in the consideration of the marriage contract, for the

* That is to say, a contract completed by a mere interchange of consent—by the *conjunctio animorum;* so that although the parties after consent given should, by death, disagreement, or other cause whatever, happen not to consummate the marriage *conjunctione corporum*, they were nevertheless entitled to all the rights and subject to all the liabilities of the marriage.—*M'Queen, Husband and Wife.*

memorable Council of Trent* declared that thenceforth a marriage, to be effectual, should be celebrated *in facie ecclesiæ*.† This decree had no reception in England (it being dated some thirty years after Henry the Eighth's renunciation of the Pope's supremacy). It nevertheless is accepted as the law of most Roman Catholic communities.

In England the matrimonial law remained unchanged, and private marriages were allowed, although unattended with the same advantages and disabilities as marriages solemnised in the Church. The verbal contract or the private or clandestine marriage differed from a marriage *in facie ecclesiæ* in these particulars:—

1. The husband did not become by it entitled to his wife's property.

2. Nor did the wife take dower as his widow at her husband's decease.

3. The marriage of either of the parties during the lifetime of the other with a third person was not of necessity void, but only voidable.

4. The wife had not that protection which coverture gives a woman.

5. The issue of the marriage were not of necessity considered legitimate.

So great were the evils of such clandestine marriages, that in the year 1753 a statute was passed, entitled "An Act for the better preventing of Clan-

* This Council was held to condemn the doctrines of the Reformers Martin Luther, Zuingluis, and Calvin. It first sat 13th December 1545, and continued with interruptions until 3d December 1563.

† Literally, in the face of the church—"The law of the Council of Trent is that the marriage to be valid must be in the presence of the parish priest and two witnesses."—*Evidence of Dr Wiseman in the Sussex Peerage Case*, 11 *Cla. and Fin.* 764.

destine Marriages." This statute enacted that in no case whatever should any suit or proceeding be had in any "ecclesiastical court to compel a celebration of any marriage *in facie ecclesiæ* by reason of any contract of matrimony whatsoever, whether *per verba de præsenti* * or *per verba de futuro*." †

Before commenting on this great alteration in the law, it will be necessary to explain the meaning of the words, "to compel a celebration of any marriage by reason of any contract of matrimony." A precontract of marriage enabled a woman to go into court and *compel a man to marry* her, but this right was abolished by Lord Hardwick's Act, which is above referred to.

On little more than the bare assertion of a discontented and criminally-minded husband or wife, that he or she had promised another person marriage prior to the existing one, a nullity of the marriage was obtained, and the children (if there were any) became bastards, the parents being pronounced to have lived in a state of concubinage. (See further as to this in Lord Campbell's *Lives of the Chancellors*, vol. 5, p. 124.)

The important statute of 32 Henry VIII., c. 38, was intended to remedy this evil, which occupied even in that reign (conspicuous as it is for crimes and barbarities) a position of notice.

This Act is given in full, as it is thought that its quaintness and peculiarities may be of some interest, and as much light is thrown on the prevalence of the times with regard to *promises of marriage*.

---

* By the canon law a contract of matrimony *per verba de præsenti*—as, I take you to be my wife—I marry you: or, You and I are man and wife—*was an actual marriage*.

† *De futuro*—as, I WILL take you to be my wife, or, I WILL marry you.

32 Henry VIII., c. 38.

CONCERNING PRECONTRACTE AND DEGREES OF CONSANGUINITE

Whereas heretofore the uſurped power of the Biſhop of Rome hathe alwayes entangled and troubled the mere juriſdiction and legal power of this realme of England and alſo unquietid muche the ſubjectis of the ſame by his uſurped power in them, as by making that unlaufull whiche by Goddis wourde is laufull bothe in mariages and other thinges, as heraftre ſhall appere at more length; and till nowe of late in our ſouveraine lordes tyme, whiche is otherwiſe by larning tawght than his predeceſſours in tymes paſt of longe tyme have ben, hath ſo contynued the ſame, whereof yet ſome ſparkis be lefte whiche heraftre might kindle a greater fyer and ſo remayning his power not to ſeme utterly extincte, therefore it is thought mooſte convenient to the Kinges Highnes, his lordis ſpirituall and temporall with the commons of his realme aſſembled in this preſent plament that twoo thinges ſpecially for this tyme be with diligence provided for, whereby many inconveniences hath enſued and many moo els mought enſue and followe. As where heretofore divers and many pſonnes, after longe contynuaunces togither in matrimonye, without any allegation of either of the pties or anny other at their mariage whie the ſame matrimony ſhould not be good, juſte and laufull, and after the ſame matrimony ſolemniſed and conſūmate, and alſo ſome tyme fruite of children enſued of the ſame mariage, have nevertheleſs, by an unjuſte lawe of the Biſhop of Rome, whiche is that, uppon pretence of a former contracte made and not conſūmate for profe whereof twoo witnes by that lawe were only required, ben divorſed and ſeparate contrarie to Goddis lawe, and ſo the true matrimony, bothe ſolemniſed in the face of the Church and conſūmate and confirmed alſo with the fruite of children, had betwene them clerely fruſtrate and diſſolved: Further alſo by reaſon of other prohibitions than Goddis lawe admitteth for their lucre by that courte invented, the diſpenſation whereof they alwaies reſerved to them ſelfis, as in kynnerede or affinitie betwene couſyn germaynes and ſo to fourth and

fourth[a] degree of anny of the ſame kynne or affinitie bifore in ſuche outwarde degrees which elys were laufull and be not prohibited by Goddis[b] lawe, and all becauſe they wolde gett monney by it and kepe a reputation to their uſurped juriſdiction; whereby not onely muche diſcorde betwene lawfull maried pſonnes hath contrarie to Goddis ordenance arriſen, muche debate and ſute at the lawe with the wrongefull vexation and greate damage of the innocent partie hath ben procured, and many juſte mariages brought in doubte and danger of undoyng, and alſo many tymes undoone and lawfull heires diſherited, wherof there had never els but for his vayne glorious uſurpation ben moved any ſuche queſtion ſyns fredōme in them was geven us by Goddis law, which ought to be moſt ſure and certein, but that notwithſtanding mariages have been brought into ſuche an uncertainty thereby that no mariage coulde be ſo ſurely knytt and bounden but it ſhould lye in either of the parties power and arbitre, caſting away the feare of God by meanes and compaſſes, to prove a *precontracte*, a kynnerede, an alliance, to defeate the ſame, and ſo undre the pretenſe of theſe allegations afore reherſid to lyve all the daies of their lyves in deteſtable adultery, to thutter deſtruction of their owne ſoules and the provocations of the terrible wrath of God uppon the places where ſuche abominations were ſuffred and uſed:

Be it therefore enacted by the King our ſouveraine lorde, the lordes ſpituall and temporall, and the cōmons in this preſent plament aſſembled, and by auctoritie of the ſame, that from the

---

[a] The canon law did not permit marriage within the seventh degree of affinity—"De affinitate consanguinitatis per gradus cognationis, placuit usque ad septimam generationem observari."—Caus. 35, q. 2, 3, Cc. 1 and 20, 21.

This was accepted as the law of the Church of England in the Council of London (2 Spel 8)—"Quoad usque parentela ex alterutrâ parte ad septimum gradum perveniat," and in the Council of Westminster. However, in A.D. 1215 the Fourth Council of Lateran reduced the prohibition to the fourth degree, and this continued to be the rule of the Church of England, as appears by the statute above, and the ecclesiastical records, wherein may be found frequent dispensations for the fourth degree, but never to the third and nearer degrees of affinity.

[b] The degrees thus referred to are enumerated in 25 Henry VIII., c. 22, and 28 Henry VIII., c. 27, and in Leviticus, 18th chapter.

firſte day of the monneth of July next (enſueyng) in the year of our Lorde God a thouſande fyve hundred and forty, all and evy ſuche mariages as within this Churche of England ſhal be contracted betwene lauful pſonnes, as by this Acte wee declare all pſonnes to be lauful that be not prohibited by Goddis lawe to mary, ſuche mariages being contracte and ſolemniſed in the face of the Churche and conſūmate or fruite of childerne or childe being had therin betwene the parties ſo maried, ſhal be by auctoritie of this preſent plament aforeſaid, demed, judged, and taken to be lauful, good, juſte, and indiſſoluble notwithſtanding any precontracte or precontractis of matrimony, not conſūmate whiche either of the pſonnes ſo married or both ſhal have made with anny other pſonne or pſonnes bifore the tyme of contracting that mariage, whiche is ſolemniſed and conſūmate, or wherof ſuche fruite is enſued or maye enſue as afore: and notwithſtanding any diſpenſation, preſcription, lawe, or other thinge graunted or confirmed by Acte or otherwiſe: And that no reſervation or prohibition, Goddis lawe except, ſhall trouble or impeache anny mariage without the Leviticall degrees[a] and that no pſon of what eſtate, degree, or condition ſoever he or ſhe be, ſhall aftre the firſt day of the monneth of July aforeſaid, be admitted in any of the ſptuall courtis within this the Kinges realme or any his graces other landis and dominions, to any proces, plea, or allegation contrarie to this foreſaid Acte.

---

[a] The 18th chapter of Leviticus and the 28 Henry VIII., c. 27, set forth the prohibited degrees as above stated.

1. "A man may not marry his daughter."

In Haines *v.* Jeffreys (Ld. Raym. 68) a man had married a bastard of his sister, and the Lord Chief Justice held, and the court thought it would be very mischievous, "if a bastard should not be accounted within the statute 32 Henry VIII., c. 38, for by that rule a man might marry his own daughter, and where it is said a bastard is the child of no one, this is in civil respects, and where there is an inheritance."

2. "A woman may not marry her aunt's husband."

In Ellerton *v.* Gastrell (Com. 318) Ellerton had married the daughter of the sister of his former wife—*i.e.* the daughter of his deceased wife's sister, or his own niece (by marriage).

This was declared to be within the prohibition of the Levitical degrees,

Society only received the benefits of this enactment for a few years. A great part of it was repealed in the reign of Edward VI.*

The promise of marriage had to be proved, says the repealing Act, before "the King's eccliasticall judge," and this worthy then gave "sentence for matrimonye cōmanding solempnizacōn, cohabitacōn, consumacōn, and tractacōn as becometh man and wyef to have." Nor do we find greater reason for this repeal than that "women and men breaking their owne pmyses and faythes made by the one unto the other, that yf after the contracte of matrymonye they might have whom they more favored and desyred, they coulde be contented by lightnes of their nature to overturne all that they had done afore, and not afearde in manner even from the verie churche doore and mariage feaste, the man to take another spowse and the espowse to take another husbande."

It creates no little surprise that the wise enactment of Henry VIII. should have been thus cancelled.

The enormities of the Precontract, as it existed prior to Henry the Eighth's reign, were not alone sanctioned by this Act of Parliament of the reign of Edward VI. In the reign of Philip and Mary (1 and 2 P. and M., c. 8) and even in the more enlightened time of Queen

---

for as a "man may not marry his father's brother's wife"—*i.e.* his own aunt (by marriage), so, by parity of reasoning, a man may not marry the daughter of the sister of his former wife—*i.e.* his niece (by marriage).—Wortley *v.* Watkinson, 2 Lev. 254, and Honor *v.* Bradshaw, 3 Lev. 364.

Space will not allow of further comment on such interesting questions of affinity. It is because the statute quoted appeared to require some elucidation on these points, and the subject of affinity has been so widely discussed during recent years, that this opportunity was gladly taken of referring to a few interesting cases decided some years ago.

* 2 & 3 Ed. VI., c. 23.

Elizabeth (1 Eliz., c. 1) they were expressly enacted by statute. The church was the cause of this. The breach of the contract of marriage was a most serious offence against ecclesiastical teachings!

The promise having been made, the church forbade anything in prejudice of it, and the law compelled persons to marry. Even in Queen Anne's reign this judicial crime was in full force. In the case of Collins *v.* Jessett, that most eminent lawyer, Chief Justice Holt, expounded the whole principle of the Precontract thus: "If," said he, "a marriage contract be *per verba de præsenti* it amounts to an actual marriage, which the very parties themselves cannot dissolve by release or other agreement, for it is as much a marriage in the sight of God as if it had been in *facie ecclesiæ*, with this difference, that if they cohabit before marriage in the face of the church, they are for that punishable by ecclesiastical censures, and if after this contract either of them lies with another, such offender may be punished as an adulterer.

"If the contract be *per verba de futuro*, and after either of the parties so contracting without a previous discharge of the contract marries another person, it will be good *cause of dissolution* of a second marriage and *decreeing the first contract being perfected* into a marriage.

"This latter species of contract might be prosecuted either in the spiritual court concerning whether it was a Precontract or not, or in the temporal court for damages, but not in both." Sir William Blackstone treats the subject similarly (Blac. Com., Bk. I., c. 15).

The great case of Dickison *v.* Holcroft is so pregnant with interesting arguments on the subject of the action for breach of promise, and the learning of the several

judges who decided the case, that it is given in the Appendix, as the reader may like to peruse it. It was the first case wherein it was held that an action would lie at law for breach of such an executory contract as that of a promise of marriage, which was then greatly opposed, because the party had his remedy in the Spiritual Court. In this Court he could recover performance and *compel* the marriage. In the Common Law Courts he could get *damages*.

The view taken of the Precontract down to the year 1753 has been given. It was a social crime enacted by statutes, and perpetrated for centuries in the name of the Church! in the name of Religion!

"Oh! Religion, what crimes are perpetrated in thy name!"

The Reformation, whilst sweeping away the festering infamy of years, passed this one by.

The matrimonial terror, the sundering of holy bonds by the Church, and linking others together with its matrimonial shackles, was obliterated only towards the end of the last century by Lord Hardwick's Act. This important statute rendered it indispensable that every marriage should be celebrated in a parish church or chapel; that every such marriage should be preceded by banns published to the congregation. A special licence could be procured at some expense dispensing with these formalities. Two witnesses to the marriage had to be present besides the minister officiating, and a register was necessary, in which the bride and bridegroom, the minister and witnesses, were to sign their names; and besides many other formalities, it was provided if either of the parties were under twenty-one years of age, all marriages celebrated by the special licence

without their guardians' consent were absolutely void, widows and widowers being excepted.

Whilst most beneficial in preventing clandestine marriages in England, and above all, annulling the law of pre-contract of marriage, this Act had many prominent disadvantages, which Lord Campbell, in his *Lives of the Chancellors*, deals with very fully. Dissenters, Roman Catholics, and others had to submit to it, or be debarred from matrimony altogether. No provision was made by it respecting the marriage out of England of persons domiciled in this country, and a trip to Gretna Green was frequently made, and the provisions of the act thus easily evaded. To illegitimate children this measure worked very great hardship, for it contained no provision for their marriage, and they having no parents recognised by the law, could have only guardians, which had to be appointed after application to the Court of Chancery. Moreover, by it marriages were declared void if there were any irregularity, although it arose out of a pure mistake in banns or licences, and notwithstanding the parties might have lived long together as man and wife, with a numerous issue considered legitimate until the discovery of the irregularity.

These many shortcomings of the statute were partially cured by the well known statute for amending the laws respecting the solemnization of marriages in England, 4 George IV., c. 76, which enacted that "in no case whatever should any suit or proceeding be had in any ecclesiastical court in order to compel a celebration of any marriage *in facie ecclesiæ* by reason of any contract of matrimony whatsoever, whether *per verba de præsenti* or *per verba de futuro*, any law or usage to the contrary notwithstanding."

Under this Act a nullity of the marriage was only decreed where the parties *wilfully consented* to marriage without publication of banns or obtaining licence.

The Church had still sole power over persons desiring to marry. The great body of Dissenters had again cause for complaint. Loud and continuous was the outcry from this section of the community, until appeased by Lord John Russell's Act (6 and 7 Will. IV., c. 85), amended by several enactments (7 Will. IV., c. 22; 3 and 4 Vic., c. 72; 19 and 20 Vic., c. 119; 23 Vic., c. 18). Persons wishing to marry without the Church or its authority now became enabled to do so, before a registrar. Previous notice of such their desire must be given, accompanied by a formal certificate and declaration prescribed by the statute. Marriages in the Church must be witnessed by two persons, and the ceremony is to be completed between the hours of eight and twelve in the forenoon, with open doors. Such is also the case in marriages before the registrar.

Prior to 1869 the plaintiff and defendant in an action for breach of promise of marriage could not be called as witnesses on the trial. The Act 32 and 33 Vic., c. 68 made these important changes: It permitted the plaintiff and defendant in such an action to give evidence in the witness-box in support or defence of the action, and further "provided that no plaintiff in such an action should recover a verdict unless his or her testimony should be corroborated by some other *material* evidence in support of such promise."

The reason for this alteration in the law of evidence sufficiently appears in the preamble of the Act, which

says, "The discovery of truth in courts of justice had been signally promoted by the removal of restrictions on the admissibility of witnesses, and that therefore it was expedient to amend the law of evidence by still further promoting the discovery of truth." The several lovers may now appear in the witness-box and do their best to gain the sympathies of the jury. The lady has no cause of complaint against the legal restriction formerly existing, if one may judge from the verdicts in cases of breach of promise. In the latter part of this book this is considered. In the breach of promise case, Bardell *v.* Pickwick, neither of the parties was called as a witness. The interesting Mrs Bardell was not put forward to speak to the "revolting heartlessness and systematic villiany" of Mr Pickwick, of "the ruthless destroyer of the domestic oasis in the desert of Goswell Street," nor of the "chops and tomata sauce," and "warming pan." The letters containing these endearing innuendos formed an important link in the evidence. Mrs Elizabeth Cluppins, who was desired by the learned Serjeant Buzfuz to compose herself, gave testimony as to these matters, though not (we are told) before sobbing with increased vehemence, and giving alarming manifestations of an approaching fainting fit, and (as she afterwards herself said) of her feelings being too many for her.

On the other hand, Mr Pickwick did not give evidence in defence of the mysterious words, but they were left to Mr Winkle and Sam Weller to explain. Of the result, the £750 damages, all are aware.

It may be that had the law been at the time of the trial that Mrs Bardell and Mr Pickwick could have both given their evidence, the novelist could

have introduced even more amusing incidents into the trial.

On the other hand, we find in the fact of such testimony as was adduced being brought forward, and the absurdity of the law in not allowing the persons who were best able to give evidence in explanation of it, one of the many sources of amusement which the case affords. All the unsupported statements of the learned Serjeant Buzfuz could only be met by Mr Pickwick (gentle and inoffensive man as he was) with violent starts and shocks to the system, perhaps not unaccompanied at times with vague ideas of assaulting the learned gentleman in the august presence of Justice.

Having thus briefly, but very incompletely, sketched out the History of the Action down to the present times, the reader may wish to know the Law of Breach of Promise of Marriage.

That is intended for any Corydon who may be placed in the embarrassing position of explaining why he no longer regards his Phyllis as of yore. It is hoped that none of the readers of these pages will require to refer to this part of the book after they have PROPOSED, though even when that ordeal is over, some of them may be influenced by *Mr Punch's* advice to all about to marry, summed up in the four letters, DON'T!

THE LAW OF BREACH OF PROMISE

A PROMISE of Marriage is not in itself binding, that is to say, there must be an *acceptance* of the promise and mutual promises of marriage. These form a contract to marry. All contracts must be founded upon a consideration; and on enquiry it is found that this species of contract discloses a consideration, which is, that the one promises to take the other to wife, if the other will take him to husband (Philpott *v.* Wallett, *see post, page* 20). Chief Justice Holt, in the case of Harrison *v.* Cage and Wife (*see post, page* 22), said the consideration for the promise is the promise of the other and acceptance of the promises by both parties. In strictness, then, what is generally known as an action of breach of *promise* of marriage, is in reality an action for breach of a *contract* of marriage.

Contracts to marry must, as a general rule, be founded upon reciprocity, and an obligation on both sides to fulfil them. In such cases either of the parties may sue for the breach of the contract. An exception with regard to infants is made. These may sue for the breach though incapable of being sued for the same (*i.e.*, he being an infant defendant, would have a good and complete defence in alleging and proving that at the time of the promise and breach he was not twenty-one years of age). The principle which governs this exception being that infancy is

in law considered as a personal privilege, of which no one can take advantage but the infant, and that therefore the adult party shall be bound by, although the infant may avoid the contract.

The Infants' Relief Act, 37 & 38 Vic., c. 62, extends the privileges which infants enjoyed prior to 1874. All his debts and contracts, except for necessaries, are made absolutely void: even should he, on attaining his majority, promise to pay or ratify the same, no action is maintainable against him thereon, although there may have been some consideration for his ratification on attaining full age. In short, there must be a new and independent promise of marriage on the infant attaining twenty-one years of age. This was the decision in the recent case of Coxhead *v.* Mullis,* which

---

* COXHEAD *v.* MULLIS

L.R. 3 C.P.D., p. 439

The pleas were—1. Denial of the agreement; 2. Infancy; 3. Release and Exoneration.

Replication—1. Issue; 2. That the defendant, after he attained his majority, ratified and confirmed the agreement; 3. Denial of the release.

The trial took place in the Lord Mayor's Court, and is referred to in another part of this book.

For the defence it was contended that the promise made during the infancy of the defendant was invalid, and could not be ratified after his majority by reason of 37 and 38 Vic., c. 62, s. 2. The plaintiff was upon this ground non-suited, with leave to move. A rule *nisi* was afterwards applied for and obtained, to set aside the non-suit, and for a new trial, on the ground—1st. That the contract was not a contract within 37 and 38 Vic., c. 62; 2d. That there was evidence to go to the jury of a contract on which defendant was liable. Counsel respectively showed cause and argued in support of the rule. Judgment was given for the defendant.

Lord Coleridge, in the course of his judgment, said:—"I am of opinion that where there is a clear promise, such as was proved in this

is given here at some length, as it is the first case wherein it was decided that a promise of marriage by an Infant is within section 2 of the Infants' Relief Act, which is as follows:—

"No action shall be brought whereby to charge any person upon any promise made after full age, to pay any debt contracted during infancy, or upon any ratification made after full age, of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age."

The contract is proved by the testimony of the plaintiff, corroborated by some other material evidence* in support of the promise. (*See* 32 and 33 Vict., c. 68 s. 2). *Bessila* v. *Sterne*, L.R. 2 C.P.D., 265. On appeal). 46 L.J. C.P., 467.)

Prior to 1869 neither the plaintiff nor the defendant could give evidence in breach of promise cases, and

---

case—a promise to marry being in this respect like any other contract —ratification, if it exists, must have reference to the contract proved. You cannot say because there is a ratification from day to day that there is a fresh promise from day to day. Evidence of ratification is one thing, evidence of a fresh promise is another, and if there is positive proof that the promise was made before, and the ratification after, the defendant became of full age, supposing that the Act applies to such a case, I am of opinion that the ratification would not be evidence of a fresh promise, but must be referred to the promise made before the defendant was of age."

His Lordship then referred to the Act 37 and 38 Vic., c. 62, and decided that this Act applied to breaches of promise of marriage, which very properly came within the fair contemplation of the law with regard to infants.

* "No plaintiff in any action for breach of promise of marriage shall recover a verdict, unless his or her testimony shall be corroborated by some other *material evidence* in support of such promise."

as was remarked at p. 14 *ante*, the evidence in these cases was confined to the letters and witnesses.

An express promise to marry (*i.e.*, a promise in so many words) cannot always be shown. There may be many reasons: perhaps there are no letters, and no one was present when the promise was made, save of course the plaintiff and defendant. In such cases the jury consider the conduct of the parties during the alleged engagement, and evidence may be given showing whether their friends and relatives regarded and received them as persons engaged to be married. —(*Daniel* v. *Bowles*, 3 C. and P., 553. *Hutton* v. *Mansell*, 6 Mod., 172.)

Promise in Writing.—The promise to marry need not be in writing, as the foregoing will have shown. For some years after the passing of the Statute of Frauds, 29 Charles II., c. 3, it was often decided that no action for breach of promise of marriage could be sustained unless the promise were in writing, it being considered that such promises came within the 4th section of this famous statute, which enacted that no action should be brought whereby to charge any person upon any agreement made in consideration of marriage. As an illustration of this, and by way of interest to readers, the case of Philpott *v.* Wallett is appended.*

---

* PHILPOTT *V.* WALLETT

3 Lev. Reports, p. 65, temp. Chas. II.

En Consideration que le Plaintiff al Request del Defendant voudroit consenter *recipere* le Defendant *in virum suum*, le Defendant promise *ducere* le Plaintiff *in uxorem*

In consideration that the plaintiff at the defendant's request would consent to receive the defendant as her husband, the defendant promised to take the

It is evident that the promise need not be written. (See also *Mountacue* v. *Maxwell*, 1 Str. 236, and *Cork* v. *Baker*, ib. 34, overruling *Philpott* v. *Wallett*).

---

suam, et que elle fuit parat' *et obtulit eum recipere* in virum suum, et il ad refuse. Et sur *non assumpsit* le Jury trove le promise supra, mes que ceo fuit puis le 24 June 1677, et nul Ecriture de ceo, et ore deux Objections fueront fait vers le Plaintiff.

1. Que ceo n'est un promise deins le Statute de Frauds et Perjuries, car ceo est intend de Promises sur payment de Money sur Marriages, nemy promises a marrier.

2. Le Jury ayant trove le promise, le trover oustre que la ne fuit ascun writing de ceo est surplusage et void. Mes a ceo fuit respond et resolve que cet promise est directment denis les parols del Statute et nemy hors del intent, qu'il est en Consideration l'un veut marrier le auter, l'auter veut marrier luy et issuit est promise en Consideration de Marriage.

Et al 2 le subsequent matter est pursuant et expositive del primer part *scil:* que la fuit un promise en fait, mes nestant en escriture, le Jury doubt si soit un bon Promise en Ley a maintainer l'action et refer ceo al Court.

plaintiff to wife, and that she was so prepared and obtained a promise from him to be her husband, but he refused subsequently. Upon denial of this, the jury found the promise as above stated, but that it was made after 24th June 1677, and without writing. It was now objected against the action:—

1. That this is no promise within the Statute of Frauds and Perjuries, for that must be intended of promises for payment of money upon marriages, not of promises to marry.

2. The jury having found the promise, their further finding of it to be without writing is surplusage and void. But it was answered to this and resolved: That this promise is directly within the words and not out of the intent of the statute, because the promise is that in consideration the one would marry the other, the other would marry him, and therefore it is a promise in consideration of marriage.

As to the second objection, the subsequent or further finding is but pursuant and expositive of the first part of the verdict, and that there was actually a promise, but no writing. Whereupon the jury doubt whether it be a good promise in law to maintain the action, and thereupon refer it to the Court.

Disappointment.—If at the time specified for the marriage one of the parties makes default, or prior thereto refuses to complete the contract, or does not complete it within a reasonable time after request, where no time has been specified, then an action will lie, and the disappointed party may recover large pecuniary compensation "for the misery of the disappointment."—(*Frost* v. *Knight*, L.R. 5 Exch., 322, and 7 Exch., 111.)

A conditional promise is often made; such as the marriage is to be celebrated soon after the death of a relative, or on the happening of some other event. Until such death, or the happening of such event, there is no cause of action for the non-performance of the contract, the time for its completion not having arrived.—(*Atchinson* v. *Baker*, Peake Add. C., 103.) But should one of the parties incapacitate himself or herself from performing the engagement by marrying some one else, then although the contract was conditional on a certain event happening, which may not have then happened, an action will lie, for the marriage of the contracting party to another person is a breach of the contract. This was decided by Chief Justice Holt as far back as the year 1698, in the case of Harrison *v.* Cage and Wife, and it has often since been confirmed.—(See *Harvey* v. *Johnston*, 17 L.J. C.P., 298; *Short* v. *Stone*, 8 Q.B., 358.)

The case of Harrison *v.* Cage and Wife presents some peculiarities worthy of mention. The plaintiff was a man, and it appeared that he promised the defendant's wife to marry her. She, being at the time of the promise a spinster, accepted the promise, but subsequently changed her mind, and married Mr Cage. In bringing the action the plaintiff had to

join Mr Cage (the husband) as a co-defendant. £400 damages were awarded the plaintiff, it being decided that "marriage is as much an advancement to the man as to the woman."—(Ld. Raymond, 386.)

A married man or woman can make a valid promise of marriage to a third person, *i.e.*, such a promise by a married person, if not to be performed within a reasonable time, is valid and binding, for he or she might become a widower or widow within such time, and would therefore be able to complete the promise.—(*Wild* v. *Harris*, 7 C.B., 999; 18 L.J. C.P., 297. *Milward* v. *Littlewood*, 5 Exch., 775; 20 L.J. Exch., 2.)

Damages against a Dead Man.—An action for breach of the contract will lie against the executor or administrator of the person who has committed the breach, and damages awarded can be recovered from the estate of the deceased (Kent *v.* Croot; see this case fully given, p. 65); but the right of action which a person has during his or her life does not survive to the personal representative of his or her estate, unless it be alleged and proved that such estate has received material damage by the breach of the promise.—(*Chamberlain* v. *Williamson*, 2 M. & S., 408.)

The reason why the right of action for breach of promise does not survive the deceased in ordinary cases, would seem to be that the contract is regarded solely as a personal one, and not as a rule affecting the estate of the disappointed party.

A prior engagement by the defendant is no defence to an action for breach of promise, for it is one of the cardinal rules of the law, that a person cannot avail himself of his own wrong. If, however, the plaintiff were engaged to some one else at the time, and con-

cealed the fact, and the defendant averred the concealment was fraudulent, it would form very material evidence. (*Beachey* v. *Brown*, 29 L.J. Q.B., 105.)

In cases of *Fraud* by the plaintiff, the defendant has a good ground of defence to an action for breach of promise, *i.e.*, where the promise was procured by the plaintiff's fraud. The following are instances in illustration of the fraud :—

1. A false representation or fraudulent concealment as to the pecuniary circumstances or previous life of the plaintiff.
2. A secret disposition of the plaintiff's property.
3. A determination on the part of the lady, when plaintiff, to settle her property to her separate use contrary to the defendant's wish.
4. The impotence or bad character of the plaintiff subsequently discovered.
5. The subsequent bad conduct of the plaintiff towards the defendant.

In the first of the instances above given, it will be manifest that the defendant would be entitled to recede from an engagement into which he or she had entered by reason of false representations so material as those dealing with the pecuniary circumstances or previous life of a person with whom he or she contemplated passing years. The future happiness of parties would depend greatly on their pecuniary circumstances and social station. It is perhaps needless to say that false representations and fraudulent concealments in minor respects would have to be very numerous to receive attention. (See *Foulkes* v. *Sellway*, 3 Esp., 236.)

The second instance does not appear to require

any comment. It is a secret disposition of property and a fraud upon the defendant, who, when making the promise of marriage, doubtless sought to have the property as well as the individual on the marriage. Exceptions to this, owing to the special circumstances of the case, are *Taylor* v. *Pugh*, 1 Hare, 608; *Hunt* v. *Matthews*, 1 Vern., 408.

By the third instance, it is not meant, as would perhaps at first sight appear, to deprive a lady plaintiff of her right to settle property to her separate use. The writer takes the view, that in the promise of marriage there is always the implication that the property is not to be settled in direct opposition to the defendant's wish. If there be property in question, and the defendant, after the promise of marriage, does not concur in the lady settling her property to her separate use; in the absence of an understanding to that effect, it is not improbable that he could justify his refusal to marry her on that ground.

In case of the marriage taking place, the deed might be set aside afterwards. (*Howard* v. *Hooker*, 2 Ch. R., 44; *Chambers* v. *Crabbe*, 34 Beav., 457.)

The fourth instance may be illustrated thus:—In an action for breach of promise of marriage the defence was that the plaintiff was a woman of bad character, and evidence was given of one instance of gross misconduct on her part. A witness was admitted to state the character which the plaintiff bore in the neighbourhood in which she lived.—(*Foulkes* v. *Sellway*, 3 Esp., 236.)

In another case, it appeared that after the promise the plaintiff had had a child, and Abbott, Chief Justice, in directing the jury, said, that if they thought the defendant was not the father of the child he was entitled

to their verdict; for if any man who had made a promise of marriage discovered that the person he had so promised to marry was with child by another man, he was justified in breaking such promise, and that if any man had been paying his addresses to one that he supposed to be a modest person, and afterwards he discovered her to be loose and immodest, he was justified in breaking any promise of marriage that he might have made to her, but that to entitle a defendant to a verdict on that ground, the jury must be satisfied that the plaintiff was a loose and immodest woman, and that the defendant broke his promise on that account. They must also be satisfied that the defendant did not know her character at the time of making the promise. If a man knowingly promised to marry such a person, he was bound to do so.—(*Irving* v. *Greenwood*, 1 C. & P., 350; *Bench* v. *Merrick*, 1 Car. & Kirw., 467; *Young* v. *Murphy*, 3 Sc., 379, 3 Bing. N. C., 54.)

Incapacity on the part of the man, or want of chastity on the part of the woman, are sufficient grounds for refusing to fulfil the promise, but neither party may set up his or her incapacity or want of chastity.—(*Hall* v. *Wright*, E. B. & E., 765; 29 L.J. Q.B., 43.)

The fifth defence to an action may be the subsequent bad conduct on the part of the plaintiff towards the defendant. The defence by a lady who was the defendant in a breach of promise action, was that the plaintiff threatened to use her ill, and was also of very gross manners and sentiments.

Lord Ellenborough, in directing the jury, said, "That notwithstanding the promise of marriage was proved, if the plaintiff had conducted himself in a brutal or violent manner, and threatened to use her ill, a woman,

under such circumstances, had a right to say she would not commit her happiness to such keeping, and she might set up such defence and it would be legal."—(*Leeds* v. *Cook*, 4 Esp., 257.)

In cases of slight bodily or mental infirmity, which have arisen or were discovered only after the promise was made, no relief is given by the law, that is to say, these form no sufficient ground of defence to an action for breach of promise. Lunacy, either at the time of the promise, or at the time of breaking it, is a good ground of defence to such an action; but lunacy, either before or subsequent to the promise or breach, or even both anterior to, and subsequent to the promise, is not sufficient defence to such an action, if at the time of the promise, or the breach, the defendant was of sound mind. (*Paris* v. *Jackson*. *Baker* v. *Cartwright*, 10 C.B. N.S., 124; 30 L.J. C.P., 364.)

In addressing the jury in *Paris* v. *Jackson*, Lord Chief Baron Kelly directed them on the question of the insanity of the defendant thus: "If you think that at the time this gentleman entered into this engagement, or at the time he broke and departed from it, he was in such a state of mind as to render him incapable and incompetent to understand the real meaning of such an obligation, that would, in my opinion, be a defence in point of law, and he would then be entitled to your verdict, but if otherwise, the plaintiff is entitled, and no subsequent insanity is any defence."

A sum of money may be paid in discharge of the promise to marry, and after its acceptance the plaintiff cannot sue for the breach of promise, *i.e.*, the defendant could aver such payment as a complete defence, or merely that the plaintiff discharged the defendant without showing how.—(*Baker* v. *Smith*, Mich. 1661:

B.R., cited in *Aglionby* v. *Towerson*, Sir T. Raym., 400.) The discharge may be evidenced by ceasing to correspond and not meeting for a length of time.—(*King* v. *Gillett*, 7 M. & W., 55. *Davis* v. *Bomford*, 30 L.J. Exch., 139.)

Damages may be awarded by the jury for the misery occasioned to the disappointed party.—(*Frost* v. *Knight*, L.R. 5 Exch., 322, and 7 Exch., 111). The affluence of a defendant, the loss of an establishment in life, and the injury to the plaintiff's feelings, may be considered by the jury in estimating the damages.—(*Jones* v. *James*, 18 L.T. N.S., 243; E.T. 1868, Exch. *Berry* v. *Da Costa*, L.R. 1 C.P., 331; 35 L.J. C.P., 191.) In these respects the measure of damages is different from that adopted in the case of other contracts, for in no other action for breach of a contract is a pecuniary solatium awarded for wounded feelings.

Inspection of Letters for the purposes of the trial.—A defendant is entitled to inspect documents in the plaintiff's possession bearing upon the amount of damages, though there be no issue to be tried.—(*Pape* v. *Lister*, L.R. 6 Q.B., 242.)

The declaration was for breach of promise to marry. The pleas were—

1. Non assumpsit.

2. Denial of plaintiff's readiness and willingness to marry defendant.

3. Exoneration and discharge.

The defendant had, some time before action, returned the letters which the plaintiff had written. He now wished to read them and the letters which he had written to the plaintiff, for his defence, and applied to the Court for leave to inspect them.

In his affidavit he did not deny that he was formerly engaged to be married to the plaintiff, and during and since such engagment that he wrote to her several letters, the respective dates of which he did not remember, in relation to the engagement, and that he received several letters from her (3), that he never made, or kept, or had, nor had he in his possession or control, any copy or copies, or any extract or extracts from the said letters, or any of them; that he had some time since returned to the plaintiff all, or most of the letters which she had written to him, but that she had not returned to him the letters written by him to her.

4. That he was advised and believed that it was material and necessary for him on the trial, and for the preparation of the trial, to have the letters produced, and that he would derive advantage from their production.

To this the plaintiff, wishing to make her grip tighter, essayed to keep the letters undiscovered, and amongst other things said, in her affidavit in reply, that she objected to the production of the documents on the ground that the defendant ought not to be enabled to compel her to show her case and to copy it; that she did not sue upon any particular letter; that the defendant promised to marry her, and that if she could make out her case, either by verbal testimony or letters, she ought not to be compelled to produce such letters; that if the defendant wished to have any letters produced on the trial, he should give notice for them to be produced, and call for them in the usual way; that the defendant requires none to complete his pleas, as he pleaded release and exoneration; that the defendant ought not to be enabled to compel the production of some letters which he might refer to in mitigation of damages; that if the defendant wished

for the production of any particular letter for the purpose of discovery, and if he be entitled to it, he should apply in the usual way.

The judge granted inspection of plaintiff's letters to defendant, but refused him inspection of his letters to her. Upon appeal to vary the Order by also allowing the inspection of defendant's letters to plaintiff, it was decided in favour of the defendant, and he was permitted inspection of all the letters. The reason for such decision appeared to be—

1. The nature of the action.

2. The letters of the parties must have a bearing at least upon the damages, and the unwillingness of the plaintiff to produce the letters was an important fact, which almost of itself was sufficient reason for granting inspection of them. And lastly,

3. The defendant possibly being enabled to obtain a mitigation of damages by referring to the letters, the reference to which by the plaintiff appears to have been most indiscreet.

In France an action of breach of promise of marriage is seldom brought. This is owing to the law, which gives damages only in cases where there is a *préjudice réel, i.e.*, real hurt or actual loss, such as seduction immediately following, or consequent upon, the promise of marriage, or *expenses* incurred by the plaintiff in preparing to fulfil the engagement, such as purchases, etc. The law on ante-nuptial contracts in France is very explicit. This may in some measure explain why breach of promise actions are not encouraged in that country. The Code Napoléon directs that prior to the marriage there should be a marriage contract in writing, signed before a notary

—(Art. 1394):—"Toutes conventions matrimoniales seront rédigées, avant le mariage, par acte devant notaire." This marriage contract may only be altered before marriage by all the parties to it, in the presence of the notary, and with the same solemnity with which it was executed. There can be no alteration of the contract after the marriage.—(Art. 1395.) Thus the marriage contract becomes accessory to, and only exists with the marriage. It has no separate existence of its own. The contract is always subject to the tacit condition—that of the marriage taking place, and Art. 1088 of the Code Napoléon makes every gift in favour of marriage lapse if the marriage do not follow. Pothier, Papinien, and Ulpian are all agreed in this principle of the contract existing only conditionally. "Si le mariage manque les conditions matrimoniales sont caduques."—(Pothier.) "Dotis promissio futuri matrimonia tacitatem conditionem accepit."—(Papinien.) "Hanc habet conditionem si matrimonium fuerit secutum."—(Ulpian) The efficacy of the contract then is dependent upon the parties marrying, and in this respect it partakes of the character of an ante-nuptial settlement in England, though in its terms it is even more comprehensive. In these contracts are declared the intentions of the parties with regard to their property: whether the same is to be subject to the law of community (Art. 1400), or whether subject to the Dotal Rule (Art. 1540). In them gifts are made, and also powers of attorney, treaties for separation, and contracts depending on uncertain events, contracts of warranty or surety, and charitable dispositions. In short, says Troplong in his great Work on the Marriage Contract:—"Tout ce qui peut établir entre les

époux des rapports de bonne harmonie, tout ce qui contribue honnêtement à leur union durable et à leur progrès; tout ce qui excite en eux l'esprit de conservation, l'émulation dans le travail, le goût de l'économie et le besoin d'acquérir; tout ce qui accommode le gouvernement de leur fortune, à leur caractère et à leur situation; tout ce qui tend à les dégager d'entraves trop difficiles pour le développement de leur bien-être; tout ce qui sert de garantie contre la dissipation, les erreurs et une administration mauvaise, &c., &c.; tout cela trouve place dans le contrat de mariage."

In a few provinces of France breach of promise actions are somewhat encouraged, damages being there awarded upon the principle that the plaintiff has suffered in public estimation; but the action is not supported by the French law as it is in England.

In Italy and Austria a mutual promise of future marriage produces no legal obligation to contract it. In Holland the law in this respect is very similar. In Germany, however, the engagement is of a more formal nature, it being an official act before public authorities. One-fifth of the dower might be claimed if one of the parties refused without just cause.

The American law of breach of promise is put very clearly in the Civil Code of the State of New York:—

Sec. 44—"A promise of marriage is subject to the same rules as contracts in general, except that neither party is bound by a promise made in ignorance of the other's want of personal chastity, and that either is released therefrom by unchaste conduct on the part of the other."

Sec. 1859—"The damages for the breach of a promise of marriage rest in the sound discretion of the jury."

Corroborative Evidence is required in support of the plaintiff's testimony, and it must be material evidence.

This was very clearly discussed and decided in an action for breach of promise of marriage, tried at Liverpool, in which a verdict was found for the plaintiff. (*Bessila* v. *Sterne*, L.R. 2 C.P.D., 265.)

It appeared that the plaintiff was a servant in the house of the defendant's father, and in the course of that employment improper relations sprang up between the parties, which resulted in the birth of a child. The plaintiff alleged that the defendant had promised to marry her, and the corroboration relied on to support that promise was contained in two conversations, one between the defendant and the plaintiff's sister previous to the birth of the child, and one between the plaintiff and defendant, overheard by the sister subsequent to the birth of the child.

On the first occasion the sister said she went to the defendant on learning that the plaintiff was about to be confined, and asked what he would do for her, and that he replied he would marry her or do anything if she would not expose him.

The second interview, after the birth of the child, between the plaintiff and defendant was stated by the sister to have been overheard by her from an adjoining room, and was to the effect that the plaintiff reproached the defendant, because he had always promised to marry her, and had not kept his word, which he did not deny. He promised to give her money to go away, and after making some violent remarks about the child, left.

The question was, whether these two interviews were sufficient corroboration of the promise to satisfy the words of the section, which forms a foot-note to p. 19.

Mr Justice Grove was of opinion that there was no such corroboration in this case. After reviewing the facts, he added it was not the sort of corroboration the Act required.

Mr Justice Denman gave similar judgment, adding he did not think it quite free from doubt. "However, all the words of the Act must be given force to, and here there were no *material words* corroborative of a promise. The relations between the parties must be looked to, and here they were perhaps more consistent with another relation than that of marriage."

Judgment was therefore given for defendant; but on appeal this judgment was reversed and entered for the plaintiff, for the following reasons:—

Chief-Justice Cockburn—"The evidence given in corroboration need not go the length of establishing the contract; if the evidence support the contract it is enough. I cannot say there was no evidence to go to the jury corroborating the plaintiff's testimony."

Lord-Justice Bramwell regretted that the judgment must be reversed, adding, "I see the danger of holding there was evidence in support of the promise. It is not too much to suppose that a woman under similar circumstances does sometimes fancy that a promise has been made to her, nor is it too much to suppose that she will sometimes find a sister or some one who will confirm her statement as to a promise having been made. The evidence was that the plaintiff said, 'You always promised to marry me, and you don't keep your word.' The defendant made no answer. If we were to hold that that was no evidence of a promise we should get rid of a great deal of evidence which is given every day at *nisi prius*."

Lord-Justice Brett concurred.

SOCIAL CONSIDERATIONS

AND

Cases decided since Queen Elizabeth's Reign

THE poetry of love is now wedded to the trammels of the law. The offspring of this union is the action of breach of promise of marriage. So many are the considerations begotten by this singular alliance that volumes might be compiled, christening its strange progeny and recording the mischievous tendencies of these small fry. Only a few of the progeny to which allusion is made, and their respective dispositions, can be referred to in these pages; however, these, it is hoped, will place the action of breach of promise, with its variegated points of view, like a kaleidoscope before the public. In the course of so doing harsh things must inevitably be said against the better halves of the human race: against a sex so beaming with attractive attributes that the contemplation of them alone unsettles the purposes of a resolute man, or nerves the unsteady to most remarkable care and precision. Such contemplation has not unfrequently caused considerable loss of appetite (as is well known), and has at times (according to general belief) been productive of many nights of sleepless-

ness, and perhaps considerable loss of time. When such effects as these are but the results of mere contemplation without vision of those charms, it behoves one not to be surprised at the effects (daily recorded) on those who both *contemplate and behold* those attributes corporeal and invisible forming one substance, Woman!—a substance which, by the singular process of its nature, transforms a man of years into the gaiety and indiscretions of youth, for

> "Old folks say there are no pains
> Like itch of love in ancient veins;"

and stern and resolute men (whom the king of the forests could not overawe) into meek dependents of its singular ways. This may even apply to a few henpecked husbands. A substance, furthermore, which makes the lords of the creation "inebriated with the exuberance of" their own contemplations, and of which Pope wrote—

> "If to her share some female errors fall,
> Look on her face, and you'll forget 'em all."

With the hope that all fair readers of these few pages will take them very leniently, it will be well to proceed to the consideration of the action to which reference has been made.

The unfortunate defendant in such an action as day after day brings him closer to the day of trial, and to his former Venus, has perhaps been heard to repeat those beautiful lines in Milton's "Paradise Lost," wherein Adam inveighs against the sex on his approaching expulsion from the Garden of Eden (having partaken of the forbidden fruit from Eve):—

"O! why did God,
Creator wise! that peopled highest heaven
With spirits masculine, create at last
This novelty on earth, this fair defect
Of nature? And not fill the world at once
With men, as angels, without feminine?
Or find some other way to generate
Mankind? This mischief had not then befal'n,
And more that shall befall;—innumerable
Disturbances on earth through female snares,
And straight conjunction with this sex: for either
He never shall find out fit mate, but such
As some misfortune brings him, or mistake;
Or whom he wishes most, shall seldom gain,
Through her perverseness, but shall see her gain'd
By a far worse; or, if she love, withheld
By parents; or his happiest choice too late
Shall meet, already link'd, and wedlock-bound
To a fell adversary, his hate or shame;
Which infinite calamity shall cause
To human life, and household peace confound!"

Certain it is that the prophecy of these concluding lines must be fulfilled as each age is succeeded by another. As the old, old story is repeated in every land, in every clime, at each hour of the sun's dial, so must the mischiefs, disturbances, and misfortunes all contemplated in those words be ever recurring through female perverseness and snares.

Whatever may be the opinion formed as to the policy of permitting actions to be brought for breach of promise of marriage, all must be agreed upon the two following points. Fair readers of these pages will do well to answer these statements *separately;* the reason for this suggestion being obvious.

1. The action for breach of promise of marriage is brought almost invariably by the fair sex.

2. The right of action is frequently most scandalously abused.

If, the first of these assertions be answered in the affirmative, it follows almost as a matter of course that the action of breach of promise is frequently most scandalously abused by the sex of which many would consider it a great privilege to be members.

Two considerations are suggested by the foregoing remarks:—1. The right of action has been greatly abused; 2. Great advantages are derived by the proper exercise of the right. It was a very strong point in the speech of Mr Herschell, Q.C., in the House of Commons, against these actions, that they were a species of blackmail. A remarkable instance was given by that learned gentleman to this effect:—

Some two years ago a woman of thirty-five brought an action of breach of promise against a clergyman of sixty-five years of age. She alleged that they had been engaged to be married since 1864, but the marriage had been postponed on account of the objection of some relatives in whose house he lived; and she produced a witness who gave some kind of corroboration to her story. On the part of the defendant the engagement was utterly denied; but according to the account of one of the counsel engaged, the defendant was afflicted with an impediment in his speech, and he had a peculiar and great love for medicine. It was said that he had taken 67,000 pills in his lifetime (or 67,000 in one year, according to some reports of the speech—as this would make an average of 182 pills each day, it must be a mistake. A little over 1000 pills a year, or three a day, may be considered the approximate diet of this reverend gentleman.) However, the result was

£150 damages. At the next sitting of the court satisfactory evidence was given that the plaintiff was an abandoned woman, who had been convicted of theft, that she had threatened two other persons with actions, and had obtained £80 to settle the one in question. Fortunately after this the £150 was not paid to her.

The second instance which Mr Herschell gave to the House, though happily so rare that its equal in monstrosity cannot be found in the annals of breach of promise actions, is nevertheless but a fair illustration of the effects in some cases of permitting the right of action. "A Being erect upon two legs, and bearing all the outward semblance of a man," brought an action for breach of promise against a lady! If it had gone to trial this monster could not have obtained more than a farthing damages. He had behaved scandalously, cared nothing for the woman—his whole motive being avarice and a grasping desire for her money. She, unlike the usual sample of female plaintiffs, felt the greatest possible aversion to have her letters read in court and published in the newspapers, paid this scoundrel £1000 rather than submit to have her correspondence read. The case elicited much comment and indignation but a few years ago. It is feared there are cases of this description hushed up.

One has not to look far for instances such as the one brought against the unfortunate clergyman. They may be counted by scores. It is impossible to say how many such cases are settled, or not brought to light, and a heavy payment of money obtained instead of the dreaded disclosure. There are some recent trials, which must be fresh in the minds of the public, wherein the female plaintiffs sought to obtain large damages,

but failed. They will be found in the concluding part of this book. It will be safe to say that the right of bringing such actions has been grossly abused by the female portion of society. They have been allowed full opportunity for making a proper use of this right, and, like the beautiful Mirabella (in Spenser's *Faery Queene*), have exercised their "soveraine powre of love" for the purpose of tyranny—abusing the privilege which is almost exclusively theirs. Oh! if the voice of warning be not too late, let Spenser's lines be brought home to every female ear, and it is hoped that they may exercise a desirable change in the female breast:—

I.

"Ye gentle ladies, in whose soveraine powre
Love hath the glory of his kingdome left,
And th' hearts of men, as your eternall dowre
In yron chaines, of liberty bereft,
Delivered hath unto your hands by gift;
Be well aware how ye the same doe use,
That pride doe not to tyranny you lift;
Least if men you of cruelty accuse,
He from you take that chiefedome which ye doe abuse.

II.

"And as ye soft and tender are by kynde,
Adorn'd with godly gifts of beauties' grace,
So be ye soft and tender eeke in mynde,
But cruelty and hardnesse from you chace,
That all your other praises will deface,
And from you turn the love of man to hate,
Ensample take of Mirabellae's case,
Who from the high degree of happy state
Fell into wretched woes, which she repented late."

It is sought to cancel the right of action for breach of promise, and the fair ones who exercise the "soveraine

powre of love" for tyranny will perhaps, like Mirabella, be virtually deprived of their chiefdom in love—losing all protection for having much abused it. If we consider the effects of actions for breach of promise, it is necessary in so doing to ask ourselves the reason why old bachelors and maiden ladies are not yet out of date? When Oliver Goldsmith's Chinaman visited this metropolis of the world, that peculiar type of individuals known as bachelors and spinsters formed an important quota in the human mass, nor do their ranks appear at the present day to have thinned. Certain it is that an equally large crowd of battered beaux and decayed coquettes may be found in every quarter and suburb of the metropolis and in every town and village of the United Kingdom. Such bachelors the Chinaman would regard as so many beasts of prey, which the law should drive into the toils by every possible stratagem, and these means failing, then should mobs be permitted to halloo after them and every well-bred company to laugh at them. As if to make the matter worse, should these celibates offer to make love after sixty years of age (and this, as many ladies will be able to say, does *sometimes* occur), their mistresses might punish them by granting the favour. Oh, bachelors! consider well the punishment which would thus fall to you for years of seclusion from marital bliss.

Towards spinsters, our Heathen Chinee looked with compassion; these would be, to him, as gardens of beautiful soil uncultivated, flowers which "blush unseen, and waste their sweetness on the desert air." Such compassion might well be engendered for the simple reason—"They would not be old maids if they could avoid it!"

It is often asked, What are the causes for this extensive dread of matrimony?

Their name is legion! Three reasons may be sufficient to dispel some doubts on this question:—

1. Marriage, if sufficiently encouraged in this country, is certainly not sufficiently protected by the law; for though contracts and everything in actual restraint of marriage are, as a general rule, void, on the ground of morality and public policy, yet the Law itself places so many obstacles and barriers in the way of marriage, and extends its assistance and protection to the married so imperfectly, that bachelors and spinsters, partly on this account perhaps, hesitate to make the change. These are such old propositions, that all classes of the community must have heard them repeated day after day. Although married and single persons have required the change so much, and so long, yet it may be years before that boon will arrive. With this introduction, a few remarks only are required to explain the first reason given for so much celibacy. If marriage be insufficiently protected by the Law, the converse is shown, viz., The law insufficiently encourages marriage, *e.g.*, a person wishing to make a particular change, or to do a certain thing, asks, "How far shall I be protected in making that change?" He finds that but little protection will be extended to him in the step which he contemplates, so he is insufficiently encouraged. Such is the case, from a legal point of view, of persons wishing to marry; they find that there will be an imperfect legal protection, and therefore they are insufficiently encouraged to make the change. The law, in its provisions dealing with marital rights, involving the duty of the one to the other, and

questions of property, custody of children, guardianship of infants, and other matters, is eminently unsatisfactory, and therefore it cannot be said that it sufficiently encourages matrimony. A few years hence will see this law altered, and some of the great barriers to marriage removed.

The natural barriers exist and may do so to eternity. These form the second and third causes for celibacy which we will briefly consider.

2. The second cause may be attributed to the caprices and whims of the sexes, resulting too frequently to their own disadvantage.

Miss Martha Graball was the daughter of a pawnbroker, who died, leaving her a considerable pecuniary fortune, which partly balanced many deficiencies. Nature had been niggardly to her. She early learnt, and day by day witnessed, the all conquering power of money. Regarding it at length as a complete passport in life, her womanly nature fell a victim to avarice. Charity—the first Christian grace—and Beauty—the highest pride of woman—were in this individual, conspicuous by their absence. It happened that Robert MacGreedy (an old acquaintance of Mr Graball, and a clerk in the Glasgow Bank) was paying one of his periodical visits to town, and having dined sumptuously in the evening, was persuaded to the contrary of the above assertions as to the natural gifts of the *rich* orphan. Nor did Robert forget the "gilded pill;" for, musing as he went on his errand of love, his Highland passion caught up the air—

"Ilka lassie has her mone,
Nane they say hae I;
Chorus—So MacGreedy's a-coming, oh-ho-oho!
MacGreedy's a-coming, oh-ho-oho!"

Unlike the great warrior who came, saw, conquered; Robert came, saw, failed! His artifices, his adorations, his shrewdness, generated by pecuniary necessity, were insufficient for the equally avaricious spinster. Martha Graball, like no small number of her sex, over-estimated her worth, and wished to have a suitor on equal pecuniary terms. Until she becomes beautiful, or her suitor rich, search for the descendants of either may be fruitless.

Let the reader look amongst his immediate acquaintance for instances of this description, and pardon one more instance of female caprice. Volumnia Merrythought had beauty and fortune. Her cousin married a man of position and wealth, and this has acted as a statute of virginity to Volumnia. The fortunate cousin has become her most direct object of rivalry. All who are not superior in wealth and position to her cousin's husband are hopeless suitors. Volumnia must wait in vain! Years roll by, the busy hand of time stealthily taking with it her double fortune, beauty and dross, leaves the impress of age and penury in their stead. This remnant of a life is perhaps sustained by a modest sum, as the reward for imparting to childhood rudiments of knowledge, or similar toil, from dawn till eve, finally will sink into the grave after a battle with life, fought bravely, but hopelessly, single-handed. There are many Volumnias who reject their equals, set too high a value on their worth, and remain merely wedded to time.

3. The third, and perhaps none the less important, reason for celibacy is this: Both the young and the old men are afraid of what has for generations and centuries been called "Frailty." Too many men fear that if they once declare the love which lurks in

their hearts (for men must love), such declaration is irrevocable, and the dreaded jaws of the law, with its manifold, shark-like teeth, are ever open to devour them relentlessly, at the simple behest of the fair object of their passion.

The shark has an invaluable friend in the small pilot-fish: they are dependent upon each other for the comforts of life. Nature balances the rapacity of this monster by making him almost blind; and so the small pilot-fish conducts him to his prey, which he only sees when close to him. Then it is that he turns upon his back, and, with extended jaws, swallows or mangles the victim, if too large to be devoured. This occurs in the ocean. On land the process is slightly varied. Here the law occupies the place of the shark, and the victim (which is usually a male) is partly disabled by the lady pilot-fish, and then mangled by the legal jaws. Having partaken of his repast, the shark permits his gentle conductor to take his leavings. What little is left is gladly accepted by the pilot-fish; but the parasites which always cling to the monster are not slow to seize the opportunity of a dainty meal.

The fear of such a fate disposes men to bury their love in their breasts, until, eaten away by its fire, they take refuge in the tomb. With no partner in life, they have but existed; having but existed, they can leave no happy remnant of their life to mourn their loss. Fame alone can record such existence: true, it may be, as they themselves would have it, an existence of single blessedness, fondly remembered by those who brought it into being, and cherished by others in the midst of which it was centred. Like an oak left to the raging elements, cleft by the fierce

lightning, without the graceful ivy clinging and binding up its deep-seated wounds, the bachelor braves alone the storms of time, happily, perhaps, without "the pangs of despised love," until the allotted period of his existence calls him hence.

But how fares it with the weaker halves of the creation? We find the hearts of these not widowed, but void—in some cases, a ludicrous aspect to the onlooker, and yet evoking great sympathy. There are groans of the unloved, young, middle-aged, or elderly; too often there are audible beatings of hearts in bosoms no longer juvenile, and, as Oliver Wendell Holmes puts it, "Bosoms that have felt no hand but the hand of time."

The loss to the British nation in these cases of celibacy is immense! The loss to these bachelors and spinsters can only be estimated by themselves.

As if to fire the flagging zeal for matrimony, a periodical is published weekly, giving to the world the aspirations, traits, and hopes of many an ardent Venus and many a hopeful Adonis. Young and old seek, through the medium of a journal, a partner for life!—so it is said. Husband-seekers advertise only their attributes, and this is but natural. If they stated a few other particulars, such as the following (which can be vouched for or identified), much trouble and many perplexing doubts would be removed, to the great advantage of gentlemen seeking partners for life:—

CLASS "A1" (*not* at Lloyds).

Fortune.—£500 a-year certain."

Person.—Inclined to be dark. Eyes blue; face somewhat freckled; nose a little depressed; figure very fine. (It has been said of her that if she were a little finer she would not be seen.) Feet small, though ankles twisted.

Of the hands little can be said, except that their best place may be in the glove.

Non-essentials.—Has the accomplishment, if such it may be called, of "etching." Was a Miss "Jones" previous to changing that immortal name some years back; but inasmuch as she desires a further change, the resumption of "Jones," with "Mrs" before it, would not be objected to. Will somebody make this known to Judy's hero, "the only Jones."

Miscellaneous Information.—Though not strong-minded, she appears to have a liking for parsons; but these, as a rule, are too wary to enter such toils. Is fond of physic, and so a doctor may be an eligible person.

A *rich* and *handsome* suitor is required for this "living prodigy."

CLASS "A1 100" (*not* at Lloyds).

Fortune.—£25,000 certain, left by her grandmother, and £5000 more on the death of her mother, who is very ill. It is believed and hoped that the latter is suffering from dropsy.

Person.—Fair, with red hair. Figure good. Two false teeth.

Non-essentials.—Bad-tempered; economical almost to parsimony; sings a great deal, but has no voice; dances well, but her feet cannot be called small.

Miscellaneous.—Very fond of winning at cards, and a long beard.

There existed in Paris some years ago an establishment: Gentlemen seeking for wives were enabled to view all the females in the institution. These were described upon a list kept by the proprietor. Interesting tenants of this celebrated home occupied rooms with glazed doors, and the particulars in the books formed an easy reference to the article required by those seeking it. The list contained the age, fortune, and qualifications of each. The visitor, not unfrequently satisfied with the particulars and the personal appearance, immediately struck the bargain, and married shortly after.

In China marriages are frequently effected through the assistance of Go-betweens, who enjoy a very different repute from those in Europe, inasmuch as among the former the employ is of the most *undoubted* character.

Society is insufficient in its range: a public journal alone can find the desired change. Advertisers are sometimes suited!—that is to say, two persons become one, or are supposed to become one and the same being. Happy, these! At times there is a stream of troubled water which prevents such a union.

Some of the reader's friends are "engaged," perhaps have been engaged for years past! Such a subject is sad to dwell upon, and yet why banish it? Nearly every lingering engagement means the blasting of two lives. The unsophisticated fair hear daily the experiences of their married friends. As a rule, the days of courtship are sweeter than those of married life. Strange, if true. Doubt then seizes those who, taught from childhood that a married life was "wedded bliss," and that the consummation of their earthly existence was to find a sister soul, by the magnetic attraction of whose nature they should find sympathy.

"Mon cœur me l'avait dit:
Toute âme est sœur d'une âme;
Dieu les créa par couples
Et les fit homme ou femme;
Le monde peut en vain un temps les séparer;
Leur destin tôt ou tard est de se rencontrer:
Et quand ces sœurs du ciel ici-bas se rencontrent,
D'Invincibles instincts l'une a l'autre les montrent
Chaque âme de sa force attire sa moitié
Cette rencontre, c'est l'amour ou l'amitié
Seule et même union qu'un mot différent nomme
Selon l'être et le sexe en qui Dieu la consomme;
Mais qui n'est que l'éclair qui révèle à chacun
L'être qui le complète, et de deux n'en fait qu'un."

LAMARTINE'S *Jocelyn.*

The hesitation is then prolonged into years!

If they could shut their ears to the matrimonial squabbles in their own family circle, close their eyes to the scenes of misery in their own neighbourhood, still there would be the public press, day after day, sounding those experiences of a section of the public—"The days of courtship are sweeter than those of married life."

Lingering engagements have another cause. They are due, as Mr Herschell, in his speech in the House of Commons on May 6th, 1879, on actions for breach of promise (to which reference has been already made) but too truly said, to the present state of the law giving damages for breach of promise, and to the moral cowardice on the part of either the man or woman who felt that his or her affections had grown cool. O! Reader, would you not be appalled at the task under circumstances such as these, of penning eight sides of note twice a week (for this is the promise made long, long ago)? The natural question is but too clear. It is oft repeated. What is there to say when all has been said over and over again, and written too, for the *second trunk* is nearly full of the letters during the past ten years! A letter must be written, the day has arrived, in half-an-hour it will be too late. Then a flood of tears! a telegram! Another letter, and other letters; finally one from the vicinity of Chancery Lane or Lincolns Inn Fields (where a noble square is o'ershadowed with bankruptcy, lunacy, and other phases of life), containing a simple request, put as politely as the usages of such cases will admit. So the abstract of Title is placed on one side (this is presuming the ten years' man is so occupied), and a hasty note made, that the property which is referred to

in certain deeds at his side, sufficient in themselves to cover the land to which they refer, was settled *in fee tail male.*

* * * * *

"My pet" (this being synonymous with the word *pest*, or wretch, and used for its convenient brevity), "I'm sitting at my desk, Mary, with parchments at my side; and my head is filled with settlements on many a happy bride——"

The reader must not be burdened with the letter. In the cases given a few pages further on he can peruse letters such as this, which have had "a world-wide circulation," or "the largest circulation in the world," and so on. It may be sufficient to mention that there is a marked difference between the letters during the past years and those of the first six months of their courtship, but the change has come so gradually, so slowly, that the fair recipient of these letters does not notice this change. Coloured note of course is still used; to have discontinued it would have been too incautious, and so cream-laid note is left unsoiled. Eight sides of coloured note, hastily filled with words, are sent to her, and they are read as landscapes of his heart.

Saturday afternoon has come again, and "the two" have met once more. The lanes through which they used to roam in this courtship's infancy are no more. Villas, both small and large, have been erected: these, peopled by many a happy pair, with little faithful copies of their sires in face and gesture, stand on the lovers' fields, and all around records the progress of time. This matters not! The highroad is better after ten years of the fields and lanes. It is certainly more cheerful, especially as some rude little boys were

constantly saying the two had been often enough and long enough together in those fields to count all the blades of grass, and to pick all the daisies and buttercups which the Jerusalem pony, who also grazed there, didn't want himself; forget-me-nots were meant for newer couples than these. So they strolled in the highroad of the town, for it was better and more cheerful. Many were the passers by who failed not to see that beneath that smile there was a gnawing pang eating away his heart.

The fear of an action for breach of promise, the reading to the world of those two trunks of coloured letters, with a verdict for a £1000 damages, is the cause of all this agony, this unmanly cowardice.

> "If every man's internal care were written on his brow,
> How many whom we envy should we pity now."

The public need not be told that the arguments daily urged in favour of continuing the right of action for breach of promise are, perhaps, as numerous as those in favour of its abolition. Who can have forgotten the animated debate in the House of Commons on May 6th 1879, when the Members grasped a very favourable opportunity of making known their sad experiences in relation to these actions? In fairness to some of those members who spoke with so much warmth, it should be mentioned (lest some doubt arise in the mind of the reader) that their sad experiences were acquired during the conduct of certain trials for breach of promise, in which they were not defendants or plaintiffs, but were counsel for the different parties. At times, like our friends Serjeant Buzfuz and Serjeant Snubbin, or even the very elderly "Junior," Mr Phunkey, urging with more or less effect the interests of some

fair client, or at all events a client once fair—a disappointed spinster or widow,—or, perchance, having to defend an unfortunate and unprotected bachelor—of which there are a few in London and elsewhere—like Mr Pickwick. But there were other members of this august assembly who spoke with equal warmth, and cannot claim to have acquired their knowlege in the above way, for they are not gentlemen of the long robe. Their constituents wish merely to record the hope that the knowledge so possessed by their parliamentary representatives was acquired from observation or reading of the newspapers, or at worst, that these gentlemen were but witnesses in a breach of promise trial or on the jury—once and only once. With the above hope the public must rest content; no personal secrets were divulged, and the reader could have no right to know them, even if he be an elector, and there are any secrets which his interest in the members might wish to have gratified.

One honourable and learned member must certainly have raised a doubt—a passing doubt, perhaps, that is all—when in a most pathetic way he told the House of Commons—"In discussing the question they must bear in mind that they were addressing an audience exclusively composed of men (hear, hear), who were all, more or less, interested in abolishing these actions," at which of course there was laughter among those interested men of that stately assembly where cock-crowing is sometimes heard in the short hours of the morning, though such sounds are not always confined to them, *i.e.*, the "members" and the "short hours."

It was on the occasion just referred to that the House of Commons made known its opinion that "the action of breach of promise of marriage ought

to be abolished, except in cases where actual pecuniary loss has been incurred by reason of the promise—the damages being limited to such pecuniary loss." This was the motion which Mr Herschell, Q.C., asked the House to consider favourably.

A small, stout little body of sixty-five defended the ladies' action against an overwhelming number of assailants. Their defence was gallant (not to say gal-lant) and noble! Fired with that intrepidity which fills a man's breast having the ladies' cause to defend, the staunch little party met the charge of the enemy's host. They in their turn charged, not once alone. Time after time did they assail their numerous foe. Led at the seventh assault by a distinguished general,* these gallant defenders of the ladies' citadel seemed to have beaten off the implacable foe, and success appeared to have crowned their efforts. But this was the forlorn hope, the final effort, the paroxysm of despair.† A retired General (who in years gone by had led his forces in many a feat of honour, and thus became a distinguished officer in the opposing party), now headed the host in the assault on the citadel, and himself engaged in close conflict with the General‡ of this fortress.

---

* The Solicitor-General, Sir H. S. Giffard.

† The Reports of the debate show that after Mr Herschell had brought his motion before the House in a very able speech, three members rose successively and opposed it; the motion was then supported by one honourable member, Mr Rodwell, when four honourable and learned members rose successively and opposed the motion, most vehemently, Sir Hardinge Giffard making a long and learned speech in favour of the action of breach of promise.

‡ Sir Henry James (who was Attorney-General when the Liberals were in power) then rose and dealt with and opposed the arguments of the Solicitor-General.

"The learned Solicitor-General (said he) stated the damages were given for the loss that the woman sustains in consequence of not being allowed to enter into the married state; that was to say, they were to give damages to a woman for not being allowed to marry a man who was unwilling to be married. That (said he) could form no ground of damage to a woman if she had proper feelings," &c.

The battle waned—it was nearly lost, when a gallant Colonel* in the ranks of the assailants addressed the defenders of the fortress in these consolatory words,—"The only persons who would suffer, or at least, the persons who would principally suffer, if the proposed change in the law were made, were eloquent junior counsel (a laugh), needy and speculative attorneys, and proprietors of newspapers; judges and juries would be saved a great amount of time and trouble, and the public also would probably be benefited by the loss of much unwholesome reading."

Mr Herschell having replied, the House divided, and the numbers were—

For the resolution, .	106
Against, . . .	65

i.e., a majority of forty-one in favour of curtailing the right of action for breach of promise. This announcement of the numbers being received with cheers.

It will be well to detail a few of the arguments *pro* and *contra*.

1. The action of breach of promise is a deterrent upon the minds of some men who would otherwise, from mere wantonness, trifle with the affections of women

* Colonel Makins.

by making promises to marry without having any intention of fulfilling them, and perhaps under the guise of such promises would procure the ruin of the woman's chastity. Against scoundrels of this type, the action is manifestly but a very poor safeguard. Nothing short of a penal law can be of any great protection to women in these cases. Certain it is, that the present barbarous law of seduction and the law of torts, which includes assaults and personal injuries, cannot continue long in its existing state.

Commerce, the foster mother of civilization, calls for the aid of women to develop her trade, and the barriers are removed which confined the female sex years ago to household employments and domestic duties. The great cities of the world now require her assistance alike in domestic and mercantile matters. Even the learned professions are visited with her presence, the necessity or advisability for which cannot be questioned in this small book, for many obvious reasons. It is enough to say that the relations of man and woman are become so general that the latter should have much greater protection against the artifices of the former, without which protection society cannot remain firm and a nation's prosperity be secured.

The first part of the argument in favour of the action of breach of promise remains to be dealt with, viz., the deterrent effects of this action on the minds of some men who would otherwise make promises to marry without intending to keep them. In such a case the woman has a partial remedy against the man for trifling with her affections, and as we have shown on page 28, she can recover damages as a solatium for her injured feelings. A man, however, has affections and feelings; he too suffers as keenly from a flirt's

inconstancy, but strangely enough he cannot hope for a jury's sympathy. The laughter of his own is nearly as great as that of the female sex at the curious proposition which he endeavours to justify, viz., that he has suffered mentally and physically by the conduct of the lady. Indeed, such mental and physical suffering seems very peculiar, and many may understand and recognise it as an old acquaintance. It seems that by the perversity of the one sex the other is thrown into a very pitiable and abject state. It is then that the head swims with visions indescribable, and the heart appears at one time to revolve like a catharine wheel; at another almost refuses to perform its functions, or suddenly beats at a rate which is not unlike the galloping of the Irishman's poetical horse, which went more by imagination than in reality. There are horses and individuals of this nature to be seen every day, and the wonder is that they remain intact.

These are a few symptoms of "wounded feelings" ascertained from reliable sources. Many in this deplorable state have felt disposed, like Hamlet, to add themselves at once to the illustrious dead. Happy the being who, whilst suffering the world's misfortunes, "the whips and scorns of time," has escaped the "pangs of despised love." It is sought to appease these pangs by a pecuniary solatium. The marvel is that a lady, who, possessing a pure unmercenary love for him who has discarded her, can resort to a court of law as possessing the balm of Gilead.

There are yet many other considerations which such actions suggest.

2. The action of breach of promise is the only remedy left to expose the base conduct of the man and vindicate the character of the woman.

This is the view of some; but what answer is made to it? Counsel for the plaintiff invariably tells the jury that they do not care for damages, the main object being to vindicate the character of the woman. But such vindication does not rest with the publicity of the lady's charms and innocence; heavy damages are secured as a punishment on the man, and so the statement of counsel becomes absolutely unnecessary and unreliable. These actions are brought for other reasons than to vindicate the woman's character from suspicions which might exist in the mind of the public on account of the termination of the "engagement." There are ladies above the ranks of those who bring such actions; they too have reputations and are sometimes jilted, and yet a jury's sympathy is not appealed to in mock vindication of their character. Such ladies need no vindication of their honour, nor do they look upon money as a substance to be weighed in the scales with love; and yet they could get thousands where Mrs Bardell and Miss Lovelaw obtain a hundred or so. The middle and lower middle classes of society alone can claim the honour of having in their circle persons who are not ashamed to apply love wholly and solely as an article of commerce and a mercenary snare—the action of breach of promise being practically unknown amongst the upper and lower ranks of society.

3. Again, this action is the only remedy given by which a lady can obtain compensation for the loss which she sustains in consequence of not being allowed to enter into the married state—a loss, it is said, to her prospects in life. "This," said Sir Henry James, in the House of Commons, "means that a woman is to receive damages for not being allowed to marry a

man who was unwilling to be married; that can form no ground of damage to a woman if she had proper feelings."

When further considered, such an argument becomes even more strange. To love and be loved is the "terrestrial summum bonum;" but an alliance without such mutual love is a curse which has no equal on this earth. The slow tortures of the Spanish Inquisition lose their chilling effects when compared to the gradual martyrdom extending over years of marital dissension. Crimes of the blackest dye are plotted in the most deliberate manner, and there is but one natural consequence of this—the desecration of the nuptial bed. The social evil being fostered by such marriages, the law becomes more and more powerless to check the crimes which she herself has initiated by making marriage almost compulsory in some cases where a person is threatened with an action of breach of promise of marriage. Is it possible that a woman claims to have sustained a loss by reason of her lover's refusal to marry her, escaping as she does a lifelong scourge?

Such an action becomes a grievous punishment on the man who saves the woman from a life of misery, and the possible offspring of such a union from the saddest of filial pangs—hopeless strife, and want of sympathy in the parents. He may have found a temper quite unsuited to his; perhaps a temper unsuited to any one. He may have discovered other similar failings on the part of her who was to have adorned his house; to have obeyed, served, loved, honoured, and kept him, in sickness and in health; and whom, on his part, he was to have loved, comforted, honoured, and kept in like manner.

A severe censure should attach to the man who enters lightly into such an engagement as that of matrimony; but it should be remembered that the principal failings of his intended spouse cannot by any possibility be ascertained until the engagement is made, as the conventionalities of society make it nearly impossible to test the tempers and dispositions of either of the persons contemplating marriage; hence they are too often ascertained at that fatal time when it is too late.

A nice-looking plaintiff can aggravate the damages greatly by her mode of giving evidence. If she be pretty, she will secure a very handsome verdict from twelve gallant men, who are empannelled in the box to decide, amongst other things, the amount of damages she should receive.

These admirers of the fair sex who are to have their feelings harrowed with the tales of love's woes are invariably a "Special Jury." Where the lady-plaintiff does not possess that captivating beauty which such a jury is ever ready to reward with sympathy of a tangible character, extracted from the defendant's pockets, neither she nor her legal advisers can hope for the wringing damages which are given to a *belle.* Nature may prompt the lady in some things very essential for her to do on the trial, knowing well that so much depends upon the susceptibilities of those twelve small, muscular organs which are packed in three rows of four in a row immediately opposite to her.

(One sees at times pictures of similar little organs of the human frame pierced in many parts with arrows and other pointed instruments; and at the sad sight a passing regret pervades the onlooker, but it does not end

here.) The lady in a breach of promise action will bear in mind—for her sex usually do—that the court of law differs but little to the court of Hymen, and her womanly grace is predominant in both. Cupid presides in the former court, as in the latter, with this one distinction: In the court of Law he sways a sceptre; in the court of Hymen, his bow and arrows. Woe be to the unfortunate man who enters either!

It has been suggested that at times the lady-plaintiff is anything but a beauty. In such cases, to ensure complete success, she must enter the court in a drooping state, assisted by her legal advisers, who should each wear a very sympathising and melancholy countenance—of course prepared for the occasion, which may not be a difficult matter to experienced professionals of the art of deception. The effect of such a scene on those susceptible hearts of the Special Jury cannot be related. Such scenes have been witnessed time after time, and the trial by jury records many affecting incidents which it will be well and prudent to omit now.

Of a certainty, a lady, though deficient in beauty, may compete with nature somewhat successfully. If the foregoing suggestions were carefully followed, and her "fall" were well kept over her face, the result would be astonishing. The legal aspect of the case would be eclipsed by the poetry of the scene. Those twelve little minds, actuated by the twelve little organs already pierced, would picture the supposed charms beneath that veil, and become "inebriated with the exuberance of" their own imaginations. In this semi-maudlin state these twelve jurymen would extract a considerable amount of money from their victim; and Cupid, Ahasuerus-like, swaying his golden

sceptre from the Bench, would look on and smile approvingly.

Two other arguments may be urged in favour of the action. *1st*, It is a legal remedy for breach of a contract, and the fact that the parties to it are man and woman does not make the contract less binding. *2d*, Without such an action there would be a recognised wrong without a remedy. These statements are surely answered by the many observations contained in previous pages on the evil tendencies of the action. Experience has shown that the mischievous results have been considerable, and there should no longer be a legal remedy for the breach of the promise except where there has been actual pecuniary damage: a definite expense or specific loss incurred by reason of the promise and its breach, such as a governess or servant resigning her situation on account of the engagement; or the injured party selling off her business, or materially altering her position in life. In cases of this description, and where a house has been taken, and perhaps even furnished, in contemplation of the marriage (an action for this reason was brought by a gentleman not many years back, and large damages recovered), the right of action should continue. It is certain that a great and lasting wrong will at times exist if the action be curtailed to cases of actual pecuniary loss. Society must erect its own barriers, and make its own laws in respect of these wrongs. They are like others which are beyond the reach of the law of the land, and come within the moral law, and will have ingratitude, meanness, and others for companions. The welfare of the community can only be attained by elevating men's views of the marriage bond, and making it

absolutely free from any coercion or avoidable restriction.

The ancient cure for disappointed lovers, "the lovers' leap," formerly so beneficial, differed very much from the modern cure, the action for damages. Perhaps, if it were better known, the ancient remedy might again be fashionable, and breach of promise actions made obsolete by fashionable decrees.

THE LOVERS' LEAP

On the top of a promontory called Leucate, in Arcania, there was a little temple dedicated to Apollo.

It was usual for despairing lovers to make their vows here, and then fling themselves from the top of the precipice into the sea beneath, where, sometimes, they were picked up alive, but half dead.

"Apparent rari nantes in gurgite vasto.—VIRG., *Æn.* I., v. 122.

This custom secured the place the appellation of "The Lovers' Leap."

It is no less strange that those surviving this leap were observed never to relapse again into the passion of love.

A short account of persons, male and female, who offered up their vows in the temple of the Pythian Apollo in the 46th Olympiad and leaped from the promontory of Leucate into the Ionian sea, in order to cure themselves of the passion of love, may be interesting to cite—

Battus, son of Menalcus, a Sicilian, leaped for Bombyca, a musician, got rid of his passion with loss of his right leg and arm, which were broken in the fall.

Melissa, in love with Daphne, very much bruised, but escaped with life.

Cynisca, the wife of Œschines being in love with Lycus, and Œschines, her husband, being in love with Eurilla (which had made this married couple very uneasy to one another for several years), both took the leap by consent; they both escaped, and have lived very happily together ever since.

Larissa, a virgin of Thessaly, deserted by Plexippus after a courtship of three years; she stood upon the brow of the promontory for some time, and after throwing down a ring and a bracelet, with other little presents, she threw herself into the sea, but was taken up alive.

Charixus, the brother of Sappho, in love with Rhodope, the courtesan, having spent his whole estate upon her, was advised by his sister to leap in the beginning of his amour, but would not hearken to her till he was reduced to his last talent: being forsaken by Rhodope he at length resolved to leap. Perished in it.

Arideus, a beautiful youth of Epirus, in love with Praxinæ, the wife of Thespis, escaped without damage, saving only that two of his fore teeth were struck out and his nose a little flattened.

Cleora, a widow of Ephesus, being inconsolable for the death of her husband, was resolved to take this leap in order to get rid of her passion for his memory; being arrived at the promontory, she there met with Dimmachus, the Miletian, and, after a short conversation with him, laid aside the thought of her leap, and married him in the temple of Apollo.

N.B.—Her widow's weeds are still seen hanging up in the western corner of the temple.

Olphis, the *fisherman*, having received *a box on the ear** from Thestylis the day before, and being determined to have no more to do with her, leaped and escaped with life.

Hipparchus, being passionately fond of his wife, who was enamoured of Bathyllus, leaped and died of his fall, whereupon his wife married her more highly favoured gallant.

Diagoras, the usurer, in love with his cook-maid; he peeped over the precipice several times, but his heart misgiving him, he went back and married her that EVENING.

Cinædus, after having entered his own name in the Pythian records, being asked the name of the person for whom he leaped, and being ashamed to discover it, he was set aside and not suffered to leap.

Eunica, a maid of Paphos, aged 19, in love with Eurybates.

---

* *Qy.*—smack.

Hurt in the fall, but recovered. This was the second occasion of her leaping.

Hesperus, a young man of Tarentum, in love with his master's daughter. He was drowned, the boats not coming in soon enough for his relief.

Sappho's leap was the most remarkable. She was a Lesbian in love with Phaon, dressed like a bride with garments as white as snow, and wearing on her head a garland of myrtle, and carrying in her hand the little musical instrument of her own invention. Having sung a hymn to Apollo, she hung up her garland on the one side of his altar and her harp on the other. She then tucked up her vestments, like a Spartan virgin, amidst thousands of spectators who were anxious for her safety, and offered up vows for her deliverance, marched directly forwards to the utmost summit of the promontory, where, after having repeated a stanza of her own verses, she threw herself off the rock with an intrepidity never before observed in any who had made the dangerous leap. Many related that they saw her fall into the sea, from whence she never arose; others affirmed that she was changed into a swan as she fell, and that they saw her hovering in the air under that shape. Whether or no the whiteness and fluttering of her garments might not deceive those who looked upon her, or whether she might not really be metamorphosed into that musical and melancholy bird, the swan, is still a doubt among the Lesbians.

Alcæus, the famous lyric poet, who had for some time been passionately in love with Sappho, arrived at the promontory of Leucate that evening in order to take the leap upon her account, hearing that Sappho had been there before him, and that her body could be nowhere found, he very generously lamented her fall, and is said to have written his 125th Ode upon that occasion.

What a contrast to this leap for consolation is the action for damages,—the one presenting all the earnestness of true but despised love, only to be satiated by the risk of life resulting in a certain

cold bath cure, the other in so many cases brimful with deceit and duplicity. Cupid actuates the one, Cupidity prompts the other.

It will be well to contrast with these instances cases of breach of promise. They are actual cases, but the names of the parties having appeared already very prominently before the public, it is desired to avoid their repetition, and thus giving pain. Their names will therefore be omitted and some immaterial particulars altered, leaving the true merits and interest of the cases untouched, save where at times some trifling addition has been found necessary to fill a vacuum, which we are told nature abhors.

Humorous Cases

Damages against a Dead Man.—The plaintiff, according to the opening statement of her learned counsel, was a widow of thirty summers. In the early part of the year 1865 she went to live as housekeeper with a Mr John Robertson, who was then in good circumstances. This gentleman becoming attached to her, according to the evidence, offered her marriage, upon the promise of which he took advantage of her; and the lady appeared in court with a small parcel in her arms, which on close inspection discovered a little pink heap. The plaintiff was examined, and stated that after she told Mr Robertson of her condition he promised to take her to London and marry her privately. Early in 1866 Mr Robertson was taken ill and soon afterwards died. The plaintiff was at his house when a writ at her instance was served on him. Though the learned counsel for the defence denied that any pro-

mise of marriage had ever been given by the late Mr Robertson, the Chief Judge held that the promise had been "amply, abundantly, and incontrovertibly made out," and so the jury, as a mark of their satisfaction with the plaintiff, awarded her £200 damages against her deceased lover's estate. This was a case of great hardship to the lady, and very much supports the first argument given on page 54 in favour of the right of action.

The Widower and the Ancient Spinster.—These parties, at the ripe age of fifty years, with all the ardour of youth, took to courting. It appeared that the widower (who, it should be known, was the defendant in this important trial of their hymeneal disputes) had such a taste for connubial bliss, that, according to the evidence of the once fair plaintiff, he proposed to her within twelve months after the death of his second wife. Like all spinsters, she at first treated the proposal jocularly; "but," said she, "as he pressed me for a definite reply, we became shortly afterwards engaged."

After this engagement they were recognised as lovers. Mr Dash, becoming very impatient, one day said to her, "I want to know when we are to be married. I wont leave until you have fixed the day." Here was a dilemma for Miss Weaver. However, in her reply, which was a very, very long one, and not as much to the point as Mr Dash could have wished, she omitted to fix the day, and as she said to the jury, "he was much put out." They quarrelled. For seven entire months Miss Weaver looked for him in vain. She lost sight of her Adonis for all this time, when one day he suddenly returned, but not without

an additional seven months' knowledge of the world being added to his fifty years' experience.

The solemn narrative was continued by the lady, and many of the jury were observed to be taking copious notes. "Our quarrel was then made up, and we continued on good terms for a further period of twelve months." But now came the trouble, and one would have thought the twofold widower would have known his duties better. "He professed warm attachment to me, and asked me to 'put the askings up;' but of course I declined, thinking it was a man's place to do that." A further estrangement ensued, not to be again renewed. A difficult question then suggested itself to the lady—How is the widower to live without a consort? This proposition, which Miss Weaver often propounded, needed no answer on the day to which reference will be made.

Continuing her evidence, she said—"On the 1st April I learnt that banns had been published between the defendant and a person named Smiles. I wrote to him to call on the following day:—

"Having kept company with you for three years, you must be well aware that you are not free."

To which Adonis replied:—

"Julia,—I received your note respecting my affairs, and in answer I thought it was quite time to look somewhere else for a wife, as you never seemed as if you would be married. From what you said you would never dress to go to church, and you said you would never mend my *trousers*, and also that you would never like to be as I were, so I thought I had better look for a wife somewhere else; I was tired.—Yours respectfully,

"J. DASH."

Time becoming important, Miss Weaver then wrote, as the evidence showed, without delay:—

"Mr Dash,—Before you receive this you will have heard that I have been to see Miss Smiles, as I felt it was my duty to do. As to the paltry excuses you make in reply to my note, I do not know what to say. They are something more than foolish; they are witless. I would not dress to go to be married! What a bugbear of an objection for a sensible man to make! I *meant* that I would not waste money on useless dress. I never go out without being decently dressed and fit to go to any church. I wished for a quiet marriage, as I had no home, and it would have been much better for me to have passed from there to your house and its duties without a great stir at our time of life. Then your next grievance is, that I would not mend your trousers. I should have thought you would have seen and known enough of my housewifery habits, during the years you have been acquainted with me, to have known that nothing came amiss to me from cellar to attic—from gardening, painting, whitewashing, paper-hanging, cooking, and even being plumber's labourer occasionally—throwing the trousers-mending into the bargain. Would not mend your trousers! I could hardly think it to be possible for a man to act in such a cowardly, mean manner, and after telling me repeatedly that you could never marry any other woman, and many a time said that you would have no other for a wife. I was quite devoted to you; and though you had stopped away, you had done so before, and I quite expected you would come when your temper had gone off you. As to what you said about me 'not liking to be as you were,' I cannot tell what you mean, but will inquire when I see you; for an interview I am determined to have, sooner or later. JULIA."

"N.B.—I write this in the presence of two witnesses, and post it in the presence of three, so that you may not say you have not received it. JULIA."

Cross examined—The defendant was about fifty years of age. That was also about her (plaintiff's) own age.

The plaintiff's evidence was corroborated by that of a witness named Ada Wellbeloved.

The defendant was called, and in answer to Mr Banter, he said that, in consequence of domestic circumstances requiring it, he determined, some time after the death of his second wife, to marry again; and he

proposed to the plaintiff. She accepted him, and he pressed her to marry him soon. She said she had no more thought of marrying him than of carrying his old "bass." He told her that three months was long enough for a man at his time of life to court; and when the plaintiff demurred to this, it "put a regular damper on him." On subsequent occasions, when he pressed her to be married, she objected, and said that her mistress would rather see her buried. This again "put a damper on him." At the visit in May, when the plaintiff still expressed unwillingness to be married, he told her that he was quite tired, and that he thought his room was better than his company. To this she replied, "Nay;" but he said it was time for him to look elsewhere for a wife; that he did not want to force any one to marry him. On several occasions he had asked her to allow him to publish the banns, but she always refused.

Mr Banter.—What about the trousers?

Defendant.—Well, when I was wanting to be married, of course I told her I had two or three pairs of trousers that wanted mending; they were always out at the knees. She said she never would do nowt o' that sort—it was a tailor's job. I told her that all my t'other wives had done it.

Cross-examined by Mr MacStinger.—The plaintiff showed such peculiarity in courting that I resolved to give it up altogether.

Mr MacStinger.—What is your notion of a proper courtship? Is it that the lady should fix the day, and make all arrangements?

Defendant.—No; but I expect they will meet you half of the road. I expect they will be something like agreeable.

Mr MacStinger.— What do you call agreeable courting?

Defendant.—Well, to meet me half the road. I was not going to do it all myself. They always were agreeable before.

The Judge having summed up, the jury retired. After a brief absence from court, they returned with a verdict for the plaintiff—damages, £50.

This case is sufficiently lengthy, and though many more comments might be made, it is thought prudent to leave the case to stand on its own merits. There will be a passing regret in many who read it, that the pair who had so often struck young hope into each other's ancient bosoms could not agree as to the patching of the breeches, referred to in both their letters. Surely in such a love there should have been a *piece* with honour.

A proposal in Court, to marry, refused (Wheelwright *v.* Stiggins).—These lovers were young. The opening speech of the lady's learned counsel was full of that pathos which fills a manly breast at the cry of "beauty in distress." The lady and gentleman first met at the house of a friend, when an attachment sprang up between them, and they became engaged. The defendant, a Baptist minister, being called away to his duties some miles from town, had to postpone marriage. During their separation there was the usual correspondence, which lasted some time; but, said the learned counsel, "latterly the defendant came to town, and instead of at once calling on the young lady, he amused himself several days before he saw her—by visiting a theatre," and amusing himself at other public places, which afford particular relief to some divines. Many

were the remonstrances by the lady at this conduct and neglect of his duty. However, it appeared that the defendant returned to his ministerial duties, having appeased her feelings, and shortly afterwards wrote letters, from which the following are extracts :—

"It is evening, and I am alone in my study. The fire and gas are burning brightly. The shutters are fast, and the curtains are drawn; and, having nothing important to do, the spirit has moved me to write a letter to you.

"I suppose you are anxious to know what I am doing.

"Yesterday evening I took tea with a bright-eyed dame, and went afterwards to prayer-meeting."

The evidence for the lady concluding with the reading of a letter, from which the following is taken :—

"Ahem! A charming widow is here, young, rich, and good. She is often in my study."

After this the learned counsel for the lady plaintiff reseated himself, with no small satisfaction; and the lady did the same.

The defendant being called, stated, that before he wrote his last letter, the plaintiff had repeatedly expressed a wish that the engagement should be broken off, on the ground that she thought they were unsuited to each other. He was now *prepared to marry her.* His income was £120 per annum. His allusions in his letters to ladies was a joke, and the widow referred to was his landlady, who simply came into his study to ask what he would have for dinner. Mr Justice Hearty—"And I suppose you said 'chops and tomato sauce.'" The defendant replied inaudibly, but it was supposed he answered in the affirmative, and required "a warming pan." The jury retired to wipe

their eyes, but returned with a verdict for the plaintiff, damages £85.

M. v. *N.*—This case, decided some years ago, presents many arguments in favour of the right of action for breach of promise; for in cases such as this, great hardship will be done if the right of action be abolished, or only curtailed to the actual pecuniary loss of the injured party. The following account of the case is, therefore, given:—

The declaration stated that the plaintiff and the defendant had agreed to marry each other; that the plaintiff was ready to fulfil her part of the contract, but the defendant was not. To this the defendant pleaded that he had not promised, and that if he had, a reasonable time had not yet elapsed. The plaintiff was twenty-six years of age, the daughter of a merchant. The defendant, who was twenty-seven years of age, resided about a mile from the plaintiff, and was possessed of considerable property. They became engaged. The wedding dress was chosen by the defendant, and things thus went on until the spring of the year 18—, when the defendant seduced the plaintiff. Subsequently, finding herself *enceinte*, she pressed the defendant to fulfil his engagement and marry her, but he declined to do so, saying he felt he had no "occasion" for a wife. In the agony of spirit that every female in such a condition must find herself, the plaintiff wrote imploring the defendant to meet her. They met! The promise remained unfulfilled! A child was born to the plaintiff, and her great personal attractions only increased the virulence of her ruin.

Was £700 damages too much, or even sufficient for the degradation and ruin to a life having such a prospect?

£50 damages for not being allowed to marry a Lunatic.—A lady became engaged to a gentleman many years ago. By mutual consent the engagement was broken off within a twelvemonth. Many years elapsed, during part of which time the gentleman resided in a lunatic asylum, visited, not by the lady, but by illusions of his being commissioned to preach to the Galileans. He recovered his senses a few years ago, or, perhaps, more strictly, changed these illusions to others, for becoming again enamoured with the lady plaintiff, he "proposed," but was not accepted. In the month of May, when each gentle breast with kindly warmth is moved and inspired with new or re-awakened love, our spinster plaintiff became engaged, for the second time, to the unfortunate defendant. A month of that terrestrial bliss, which lovers only experience, passed away, and the defendant returned to the other side of the Tweed, where he lived, leaving his fair one in our City of Smoke. In the keen and canny atmosphere of Edinburgh, alone —unbeguiled, he, the ardent lover in London, became doubtful as to the wisdom of having a partner for life such as the plaintiff; and the evidence showed that he shortly afterwards declared that he looked on the engagement as "practically at an end." The experience of thirty-five summers had taught the lady to regard things differently. Many were the warm expressions (perhaps *too warm* for the ensnared lover in the modern City of Athens) which the postman brought to him day after day.

In the bleak month of November all love had vanished from the maiden breast of our meek lady of thirty-five summers; for early in this month a paper barely 14 inches in length and 8 inches in width

was handed with some courtesy and grace to our friend north of the Tweed by the clerk of one of the Writers to the Signet. The contents were concise and unmistakable, printed at times, at others written with a clear, though cramped hand. This was a missive from the lady who had doubtless oft looked into his eyes and spoken words of greatest tenderness. The words which she sent were of a less poetic turn. On the one side was a command by Victoria (who, for the reader's information, it was added, was, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith) that he should within a limited time enter an appearance in the Queen's Bench Division of the High Court of Justice in an action at the suit of Constance Faithful, spinster, and that in default of his entering an appearance, Constance (his darling) might obtain judgment in his absence. This he found more and more interesting, and so he read the other side with increased attention. "The plaintiff's claim is for damages for breach of promise of marriage—£500, and £4 for costs, and if the amount claimed be paid to the plaintiff or her solicitors within —— days from the service hereof further proceedings will be stayed." Then for his guidance were the following particulars, that he might know where to pay the £500 and costs. "This writ was issued by Messrs Wolf & Lyon, of Cannon Street, in the City of London, solicitors for the plaintiff, who resides with her mother in Camden Town." The £500 was not paid, but shortly after receiving this paper he came to town and an appearance was entered. That is to say, his legal adviser notified to Constance's legal advisers that he should defend

the action, and required full particulars of the claim.

The evidence given in court showed that the canny lover immediately returned to Scotland and entered a lunatic asylum as a voluntary patient. At the trial it was stated by medical men that he was still there, and that since February, that is, long before the trial, he was transferred to the "compulsory" class of lunatic patients. It was also proved that the defendant was a lunatic ten years ago (doubtless when considering the wisdom of his re-engagement his intellect became impaired). As, however, at the time he had engaged himself it was decided that he was not a lunatic (to which, of course, some may be disposed to take exception), and that at the time he had broken off the engagement he was not of unsound mind (which will, of course, be readily admitted), the plaintiff obtained a verdict for £50 damages.

The learned judge, in addressing the jury, dealt with the arguments of the defendant's counsel, viz., that if any damages were given they should be nominal, it being rather a release not to marry a man who turned out to be a lunatic in this way. On the other hand, her affection may have revived, and she may have conceived a strong attachment for him and desired to watch over and nurse him. So for the loss of consolation in nursing a lunatic our lady plaintiff was rewarded with £50. Comment on this can best be supplied by the reader.

"*Be wery careful o' widders all your life, Sammy.*"—The plaintiff was a widow of a highly prepossessing appearance; the defendant was equally gifted by nature—in these two respects the parties were suited.

The one, however, according to the evidence, was poor and crafty, the other rich. There is more to follow. £1000 was claimed for breach of promise of marriage. The interesting widow was earning a salary of £160 per annum at a large millinery house in the City of London. She was wont, after the day's business, to visit Regent Street and its neighbourhood. In search of pleasure? Banish the thought! It was said merely to improve her knowledge of mantles, etc. (which are so tastefully arranged in this neighbourhood, as many ladies know, and of which fact their husbands are made aware when the account is sent in). "One afternoon in December," said her learned counsel in his pathetic address to the jury, "the plaintiff and defendant met for the first time. As she alighted from an omnibus there was a dog which seemed to have got into some trouble with a bigger dog, and, with the natural sympathies of a woman's heart, the plaintiff took the part of the little dog, and so did the defendant, the result being that the wrangle between the two dogs had culminated in an action for breach of promise of marriage. The quarrels of these dogs having been adjusted, the parties entered into conversation." Now it appeared that they had alighted together from the same omnibus, and that the conductor had given the lady's change to the gentleman, for, continued her counsel, "he understood that part of this conversation (*i.e.*, after the wrangle of the dogs) had reference to the change, and that the defendant in so alluding to it put the coins (which were coppers) to his lips and kissed them." (Much laughter ensued in court at this narrative, perhaps, for one reason, because the omnibus conductor's delicate hands had sugared the coins). The defendant being in this senti-

mental humour, the lady had no difficulty in obtaining a trifling present of nearly £5. Soon after this they parted, and met again by appointment on many occasions. The nearest approach to a promise of marriage by the defendant was a letter from him to the plaintiff, saying, "Man is not made to live alone, and therefore come and live near me;" and another to his "Dear Lizzie," saying that he had found her "nice apartments at 25s. per week—coals at the usual price." In less than a year the defendant had given the plaintiff £115 in cash, besides lockets, a bonnet, and other presents: this latter was the person who sought to prove a promise of marriage.

> "Win her with gifts, if she respect not words;
> Dumb jewels often, in their silent kind,
> More than quick words, do move a woman's mind."
> —*Shakespeare.*

The ardour of the city merchant cooled, and the widow (as do her sex, one might say invariably) first threatened, then attempted to soothe, and regain by artifices the altered man, but ended by threatening him with all the vehemence of which the sex is capable.

Many were the snares now laid, but all the pitfalls were avoided, and the enemy came at last to the foe's camp; *i.e.*, the widow consulted the solicitor of her former lover.

The evidence of this man of law showed that no mention of a promise of marriage was hinted to him by the plaintiff. A final attempt was necessary: £1000 was claimed for breach of promise. It is not to be wondered at that the learned judge spoke of the facts brought to light as "a story of London life."

There is no cause for surprise that the jury, without leaving the box, found an immediate verdict for the defendant (who, as his learned counsel said, might be amenable to their censure for his immorality), for, as the evidence clearly showed, the plaintiff was a clever, designing woman, who, having ascertained that the defendant was engaged in commerce in the city, and had achieved a considerable fortune, was quite willing to be his mistress, and, failing in that, sought to extort £1000 for breach of promise of marriage. Ninety men out of a hundred would have resisted such an action as this, and the plaintiff, trading on the fact, also, of the ill-health of the defendant, had conceived that he would not dare to resist the action, knowing all the publicity which such a case must entail. Let men hesitate before they make such an acquaintance. Let them be guided by the advice of old Mr Weller ("the Ancient," as Samivel Weller called him) and "be wery careful o' widders all their lives."

£3000 *Damages.*—In that *shady* part of London which includes two squares, each bearing an essentially German designation,* there resided a young spinster in the bosom of her family. Many miles away, in a neighbourhood not quite so shady, and yet equally adorned with umbrageous trees, there resided a very amorous young bachelor. How these, the heroine and the hero of the following legal romance, became acquainted, even "engaged," how there was a breach of the engagement or promise, and finally an action for damages, resulting in a verdict for the above sum (all

* Mecklenburg and Brunswick.

within one little year), the following pages will show:—The trial took place before that eminent Judge who, when at the bar, became very distinguished for two things,—1. A speech occupying 140 hours; 2. A very complacent mode of putting questions to the witnesses.* Having said this much the reader may be surprised to hear that in the course of the present trial no such question is recorded.

"It's of no consequence," Mr Toots would say, and like him, we will "move off," or on, as "Joe" did, lest by delay we find that we "don't know nothink."

The plaintiff was a young lady of barely twenty-three summers, with no pecuniary means to speak of, though of very good family and of great personal attractions. Her father was "something in the City." The defendant, a young man of twenty-five winters, was possessed of an income of nearly £4000 per annum.

A few years ago, in the bright genial month of May (which was then a pleasant part of the year in England, this being incidentally mentioned lest the fact be forgotten), Miss Truelove accompanied her sister to a picnic on the banks of the noble Thames. Here they met two sisters of the defendant; an intimacy followed, which soon ripened into friendship, and the Misses Truelove were invited to the house of these young ladies, and stayed there for a month.

The hero of this legal romance not being a bashful young man, paid very considerable "attention to the young lady, and after her return to town he requested

* This legal luminary spoke for twenty-six days in the Tichborne case, or rather in Tichborne *v.* Lushington. In cross-examining witnesses his questions very frequently commenced, "Would you be surprised to hear?" and this mode of questioning a person became very popular shortly afterwards, as the public will remember.

permission to write to her." This very great favour was granted. The world has been informed that he wrote. The world has had an opportunity of reading his letters, addressed and intended solely for her, his "dearest Lucy."

The defendant came to town, visited at the house of the young lady's father, and upon one occasion proposed marriage to her. He was accepted conditionally, that is to say, she asked him, not without many a smile on those dimpled cheeks, "to wait for three months to see if his affection was not a mere passing one, and also that he might get the consent of his parents." Such was Miss Lucy Truelove's explanation in the witness-box. Where is the man whose heart would not expand and overflow with gushing words, telling of eternal love, on the mere suggestion of his affection being a passing one? Every lady knows too well (taught as this sex is, by nature, in all the subtleties of love), that seeming indifference or a pretended desire on her part to put off, or not to refer to "the subject," makes the fiery flame blaze with redoubled fury in the manly breast. The crochet was put aside for a time. Little domestic matters, which form part of the routine of young ladies at home, were of course neglected. The piano took at times a tone from the sighs of that heart for the presence of the absent one. Those dainty hands now worked a pair of slippers, for, in a letter, they were asked for by the writer, who concluded by expressing much satisfaction that the rings he had sent pleased her. The small boy with wings, a bow, and an inexhaustible supply of arrows, who takes no rest either by day or by night, had done considerable mischief. His shafts were buried deeply in the vital organ of our

hero; for this gentleman, in the month of November, informed his mother of the love he had for the young lady. A maternal letter followed, expressive of her pleasure that the fair object of her son's choice had "consented" to be one of the family, assuring such fair object (or purporting to do so) that she would have a second mother's love, concluding with the hope and belief that Gussey would be a good husband to her. From Gussey's sisters came letters, or pamphlets, as the postman called them, expressing the profoundest affection for their intended sister-in-law. All the endearing terms which filled the many sides of coloured, crested, and scented note are not for the public gaze, they are not to be "dished up coldly," for—

> "—— This eternal blazon must not be
> To ears of flesh and blood."

Gussey's turn to write came. His letter to "Dear Mrs Truelove" announces gradually his affection for her daughter. He is careful not to make the news too sudden, dubious as to what the result might be of such a shock to her maternal feelings, perhaps resulting in sensational fits peculiar to ladies, and which it is thought will only be thoroughly understood when lady doctors take their stand in the ranks of the medical profession. He trusts that Lucy's mamma will have "no objection," adding of course that his mamma was very pleased with the engagement, and that he would always do everything to make Lucy happy.* So Lucy's mamma replied without delay. She had "no objection, seeing that they had determined

* Gussey was receiving nearly £4000 a-year at this time, and in another year would receive more.

to marry;" her "warmest wishes" accompanied this intimation.

There was a lengthy correspondence between the affianced pair, down to the month of February, when the letters became less frequent, the defendant stating as his reason that he was studying hard. The wet month of April is not encouraging to the flame of love which burns but dimly. By the 27th of this month a manifest change had come o'er the spirit of his dreams, and the marital inclinations of this young man were chilled. In a letter of that date to "Dear Lucy" (the letters which indicate the superlative degree being omitted), he stated that for some time he had been gravely considering the step which he had at once purposed to take. He had come to the conclusion that his conduct was extremely precipitate, and that hasty admiration alone prompted that course; that an engagement so formed could never be conducive to real happiness. In addition to this, he was *utterly unprepared* to settle down, believing that he had not seen sufficient of life to undertake a career of so much importance, and that it would doubtless seem to her very unkind, although he thought it to be the wisest step. In token of friendship the young lady was to keep the few presents and forget him who now signed himself as hers sincerely.

The plaintiff replied that it was very unkind, etc., but on the 4th May all hope vanished. A letter came saying, that after the most anxious thought and reconsideration the writer could come to no other than his previous conclusion. It was better to ask at once for a release from the engagement, certain as he was that the unhappiness would be far greater than any temporary unhappiness from it being broken off. The

defendant was presumably favoured by the plaintiff's family with letters subsequent to this one—possibly expressing three things—1. surprise; 2. annoyance; and 3. indignation.

"In the end," said the learned counsel, "there was nothing left for the plaintiff except to ask for compensation at the hands of the jury, so far as money could compensate for such a wrong."

The plaintiff, in giving evidence in support of the learned counsel's statements, proved the letters to have been written by the defendant.

The learned judge remarked, that all the letters seemed to have been written in a hurry. (No one was *surprised*, and there was much laughter in consequence.)

The evidence being continued. "On one occasion, when Augustus gave Helen a fan, I told him that I should not have any money at all when I married, and he said it did not matter, for he never thought of money. I never had any disagreement with him."

Mrs Truelove (who, it will be remembered, had "no objection" to the marriage for the reason she gave, which see *ante*), next entered the witness-box and proved the terms upon which the young people were.

Documentary evidence followed the foregoing statements of the young lady and of her mamma. Notes had been kept. A Diary does prove useful to young ladies sometimes. The exact financial circumstances of the ardent young man were fully disclosed, hence perhaps "no objection" and "the warmest wishes." His retreat was too late. The jury were told that he had a life interest in over £90,000 secured in the public funds and various stocks until the next year, when he would take an absolute interest in that sum.

The learned judge, on hearing this remarked, "Very solid that."

The jury (who at this moment were comparing this acceptable little sum with the small honorarium which they were to receive after the trial) echoed the learned judge's words, in tones similar to a croak, a sigh, and a groan, "Very solid indeed."

In addressing the jury upon the question of damages, the learned counsel for the defendant called no witnesses. His instructions were to make no imputations of any kind upon the plaintiff, or indeed to say a single word that could in any way hurt her feelings. "Damages," continued he, "in cases of this kind must take a wide range to meet the justice of the various cases;" and looking at all the circumstances of this case, he for his own part should have thought that the parties were happier not for the engagement, but for it having been broken off; concluding by calling upon the jury to be temperate in awarding damages for the breach of a slight and hasty engagement to marry.

The jury evinced their temperate view of this slight and hasty engagement by a verdict for £3000 damages.

Mothers-in-Law.—The following case is supposed to have been tried at New York:—

Miss Amelia Donnerschlag (*Thunder-stroke*) brought an action against Mr Augustus Becker for the recovery of 200 dollars as compensation for his refusal to execute a formal promise to marry. The defendant, while admitting that he had promised to, and been accepted by the young lady, stated that after spending eight months on a visit to her mother he had arrived at the conclusion that his future mother-in-law's temper would be an insuperable barrier to their wedded happiness.

The following dialogue then passed between the Judge and the defendant:—

The Judge—"Had your intended mother-in-law announced her intention of residing with you after the marriage, of keeping house for you, and taking care of your money?"

The Defendant—"Yes, Mr Judge."

The Judge (sympathetically)—"Proceed, young man."

The Defendant—"I was very fond of Miss Amelia, but I broke off the engagement because of her mother."

The Judge—"Well, my young friend, would you rather pay 200 dollars to the plaintiff or marry her and live with your mother-in-law?"

The Defendant (emphatically)—"Pay the 200 dollars."

The Judge then proceeded to give judgment in the following terms:—"Young man, permit me to give you a cordial shake of the hand (they shake hands). I was once placed in the same predicament as you, Mr Becker, and had I possessed your decision of character I should have been spared twenty-five years of infinite worry and vexation. I had the choice of paying 150 dollars in gold or marrying; being poor, I accepted the latter alternative, and have bewailed it ever since. I am pleased to meet a man cast in your mould. My decision is, that you are acquitted, and that the plaintiff must pay a fine of 10 dollars, with the costs, for attempting to place an honest man beneath the yoke of a mother-in-law. You may go."

An Australian "trip."—The following is a curious result of an action of breach of promise in Scotland, and is taken from a reliable source:—Some time ago, a girl, who had been courted by a young man named M'Croke, emigrated to Australia to better her position,

but was induced, under a promise of marriage, to return home. After considerable delay, her lover refused to marry her; whereupon she brought an action for breach of promise, obtaining a verdict with £500 damages. Failing to pay this, M'Croke was imprisoned. He petitioned the Court for an order that the plaintiff should contribute to his maintenance. The application was granted; so that, besides paying her own costs, and obtaining no remedy, the plaintiff must now pay a weekly sum to keep the perjured lover or he will be released.

Love amongst the Fishes.—In the opening address to the jury, the plaintiff's counsel gave them some interesting information. The plaintiff, said he, keeps a shell-fish shop, . . . and the defendant is a German bottle-merchant. . . . The jury were thus prepared to hear something very fishy, and were soon put out of suspense. The evidence of the plaintiff may be summed up as follows:—The defendant was a frequent customer at her shop. In this there was certainly nothing strange, for the fish were particularly good. It even appeared that his visits to this noted little *plaice* extended over three years before he first began to pay her particular attention. Shortly afterwards he proposed to her, and the proposal was subsequently repeated. One evening, so persistent was the defendant that he produced a licence, and insisted that the ceremony should be performed the next day at All Souls' Church. The next day came, but the bottle-merchant did not. The plaintiff, who had dressed, and was prepared with a veil for the occasion, had to take them off again directly the clock struck twelve. After a little pause, during which a pocket-handkerchief and other useful articles

were produced, the evidence was continued. The defendant apologised for his conduct, and the promise was renewed; but he failed to fulfil his engagement. Two assistants from the shop were called, and corroborated the evidence concerning the promise. This being the evidence in support of the action, the defendant was called, who stated that the whole of the foregoing statements (saving, of course, the excellence of the fish) was a tissue of falsehoods. Several of his friends, who had frequently accompanied him to the shop of the plaintiff, stated that they had never seen anything pass between the plaintiff and defendant which would lead them to believe that they were affianced people, and on several points they contradicted the plaintiff's witnesses. The learned counsel for the plaintiff having addressed the jury on behalf of his client, these gentlemen refused to take the white bait, and returned a verdict for the defendant. It is rumoured that some of these gentlemen have been seen in this fish shop partaking of oysters regularly since the trial.

Precocious Infants.—Two babes, destined to form the subject of these few lines, were born only a few years ago.

Their teething was hardly over, and the swaddling clothes which enveloped their tiny limbs had scarce been replaced by the apparel of a boy and the embellishments of a girl, when each was seized with an ambition which occasions much agitation in the upper regions of the body, and acts as a complete alterative to the whole.

The grown up infants (for such they were in the eyes of the law), first met on the Railway platform of

the Crystal Palace, on one of those days when 'Arry distinguishes himself by taking a leading part in Bank-holiday frolics, with the valuable assistance of the gentle sex, the partners of his joys. Easter Monday was the memorable day when the hero and heroine of this story were introduced to each other by mutual friends, and it was further stated on the trial that the whole party spent the day at the Palace, the male infant accompanying the female infant home. These two met frequently, once at a choral festival, in a delightful part of London where hides are tanned.

The "young gentleman" appears then to have asked the young lady's permission to pay his addresses to her; which permission, it is needless to say, was granted, for had it been otherwise there could have been no record of their acquaintance in this little book. From that happy moment when the faint whisper of the word "yes" left those lips of the fair plaintiff (for such she became after the breach of promise), until the breaking off of the engagement, they visited at each others' houses. An engaged ring was given, and many very affectionate letters followed. At times quarrels arose, for the well-known cause, a mutual belief in each other's coolness, but nothing more serious than that. The defendant came of age, and the courtship was continued. It appeared, however, that the defendant, not long after, returned the plaintiff's letters, which she burned. Shortly afterwards, meeting the defendant with another young lady (perhaps gathering some of nature's gems, which in the language of flowers mean "true love"), she placed the *matter* (which was a compound of his letters and her feelings) in a solicitor's hands.

Every infant should know the result, which was as

follows—The learned counsel for the defendant: having urged that a contract made by the infant was not binding upon him after his majority by reason of ratification, his Lordship had no alternative but to non-suit the plaintiff, giving her leave to "move" the court above. The court above was "moved" (perhaps nearly to tears, for it was a very hard case), but it was decided that the infant's promise was not binding, for although, on his attaining his majority, he had continued the courtship, there was no actual promise made after his emergence from babyhood.

A case decided not long ago is exactly within the meaning of Mr Herschell's motion in the House of Commons, and the remarks (page 61) on restricting the right of action for breach of promise to cases of actual pecuniary loss.

The plaintiff had arrived at that period of life when ladies do not like to be asked the precise number of their years: "she will pass very well for forty-three in the dusk, with the light behind her."

Unlike the lady of whom the judge sang in open court (in "Trial by Jury"), she was the daughter of a needy attorney, but by commendable industry became proprietress of two stalls at a bazaar. At the one she sold toys, at the other needlework and fancy goods.

Now the guardians of a very large parish had a clerk with a very large family, and this clerk was receiving a salary of £500, with expectations of an increase (which have recently been realised, although the family numbers, as before, something under twenty).

The lady who has been introduced to the reader had the misfortune to be introduced to the clerk of

the guardians of this very large parish, and the two soon afterwards "discussed marriage." In consequence of this discussion and the cause of it, the lady parted with one of her stalls in the bazaar, and sold off her stock at a sacrifice.

The correspondence, which continued for nearly a year, indicated, as the learned counsel said, how lovers run up the gamut of love, beginning "Dear Miss Brown," and continuing "My dear Julia," "My dearest Julie," "My Darling," whilst the defendant signed himself "With love and kisses," "Your charming old man," adding as a suitable postscript, "I am delighted to say I am A1 at Lloyd's, copper-bottomed."

Differences shortly after this arose on the question of a settlement, and within a very short time afterwards the defendant married another lady.

The plaintiff had disposed of her business, the profits of which varied from £70 to £130 a-year; and besides this actual loss she had spent nearly £20 in preparation for her marriage.

The jury very properly awarded her several hundred pounds, as a fair computation of her actual pecuniary loss.

FINIS

APPENDIX

DICKISON *v.* HOLCROFT

Monday, April 28, Tuesday, April 29.—25 C. II.

3 Keble's Reports, p. 148.

In assumpsit one mutual promise of marriage was excepted in arrest of judgment, that no action upon the case lyeth, being a spiritual marriage. But by *Atkins Justice*, in C.B., the loss of marriage is temporal, without other loss, as 4 C 16, and Trin. 11 Jac., 1 Roll 35; and it is only the goodness or validity of marriage that is spiritual. The loss is temporal, and there is no recompense in the spiritual court for it.

Also, on promise that concerns marriage an action will lie, as for money, for portion, etc., and so judgment for the plaintiff.

Ellis acceding; so *Windham, Justice* ( ); and all the cases of portion and the like are where there was a marriage and so remedy in the spiritual court; but here is no marriage, but only a promise that if the plaintiff would marry the defendant within a fortnight, the defendant would marry the plaintiff, which is a temporal matter that interposeth, which is sufficient to support the action though the matter be spiritual, as grant of a pension by deed, which, though between spiritual persons, is sueable for at common law.

14 Ed. IV. b. 6, and Aff. 7 and the former cases show the same difference; and a promise is as much a temporal act as a covenant, as F.N.B. 44, A 120 K.

Also, mutual promises are sufficient alone to support the

action, of which the spiritual court has no cognizance; nor is there a more valuable consideration in our law than marriage, to settle an estate, against which the same objections may be made as here for damages.

But suit on such promise to execute the marriage must be in the spiritual court; but not for the loss which is grounded on the agreement, which is a temporal act; and though illegally obtaining this by catching surprise, or of an infant. These are only evidences to make them void, or in mitigation of damages, in Hub. . . .

The consent of the mother is of less moment; and Morr. 605—the gaining of administration is a spiritual act, yet a promise of it is temporal (Hut., 7 Peter, and Stafford, Hub., and 1 Roll, 22).

Upon debate, an action was sustained, and the stream of authorities being this way, judgment for plaintiff.

Vaughan.—C. J., for defendant, said this suit is only since Queen Elizabeth's time, but an absolute silence before, though the occasions of it were as great as ever, and no judgments of the late times are to be considered in regard; then the thing itself was temporal, p. 14, Car. I.

Stretch *v.* Parker, 1 Roll 22, § 20, was a single judgment, and multitudes thereof do not oblige so, but each court must give judgment according to true inference from the reason of the thing. . . .

There are doubtless many ecclesiastick matters for which there may be temporal promises sueable in the king's courts.

This view of the marriage is of more latitude, and in all pleadings whereof the plaintiff entitles himself he must aver himself, is not faulty in that measure of which he was suspected; for no action lieth on the private speaking of the words, but on the public suspicion: that thereby Groves and the plaintiff here hath not averred that this intended was a lawful marriage, and the law suspects every marriage.

And her saying she was "*parata et obtulit se*," but doth not say, *infra*, 2 Septimanas, as the promise is; also, when a third person is required to do an act, the plaintiff must show the act was so offered as it might be done: and it is not said she tenderd at the church, nor whether any minister was by: and that there were three Sundays between, and a promise to take husband, notwithstanding any impediment, is against law; and promise to take him to husband, if there be no impediment,

cannot be sued for in the temporal court, because the impediments are only of ecclesiastical cognisance, and cannot be alleged and tried at common law.

As for calling one heretick, no action lieth, because the temporal courts cannot judge of this justification whether he were an heretick or not; and though the promise in question be not so expressed, yet it must be necessarily intended if there be no impediment.

2. By the Canon Law the act of marriage at the time of it ought to be absolutely free, without coertion; and if the minister know any restraint, he is not to marry them: as if one make obligation to marry the other, and a promise to marry is the same, and does as much violate the marriage.

In debt, on covenant to marry the defendant's daughter, he was forced to answer, being on a deed; but it is said that without deed it should be otherwise, and 22 Aff. 70 Det., Br. 134, is only a transitory opinion. No case adjudged, nor differs not from the former case, but is expressly the same; for the money could not be promised by covenant, unless by deed, yet F. N. B. 44 A is grounded thereon, which hath misled ever since, he taking no notice of the former difference, though 15 Ed. IV. 32, and 19 Ed. IV., do preserve it as that such promise hath not "*quid pro quo;*" therefore, without deed is *nudum pactum.*

3. Also, the case in question admitting the cases preceding, the promise was not to be ready, but actually and absolutely to take him to husband, which is *nudum pactum* with any consideration; yet on obligation for not marrying such a tender had been sufficient; but this is grounded on want of recompense for the thing promised, therefore, whether at request or without, is but *nudum pactum;* and it was in her power to perform it, though it was *not* in his power to question her for the non-performance; but this could not be performed by her unless by him also, and the promise on consideration to lodge with me in the same chamber or bed, I will lie with you, this must be averred performed as to read in my hearing, or saluting in my sight, these, if done by the plaintiff, cannot but be done by the defendant: therefore must be averred as well where it is to party as where it is to a stranger as well; so judgment for the defendant.

The other judges being *contra*, therefore judgment for plaintiff.

INDEX TO CASES CITED

Anonymous, p. 64, *et infra*
Aglionby *v.* Towerson, 28
Atchinson *v.* Baker, 22

Baker *v.* Cartwright, 27
Baker *v.* Smith, 27
Bardell *v.* Pickwick, 15, 16
Beachey *v.* Brown, 24
Bench *v.* Merrick, 26
Berry *v.* Da Costa, 28
Bessila *v.* Sterne, 19, 33

Chamberlain *v.* Williamson, 23
Chambers *v.* Crabbe, 25
Cork *v.* Baker, 21
Coxhead *v.* Mullis, 18, 19

Daniel *v.* Bowles, 20
Davis *v.* Bomford, 28
Dickison *v.* Holcroft, 11, and Appendix

Ellerton *v.* Gastrell, 9

Foulkes *v.* Sellway, 24, 25
Frost *v.* Knight, 22, 28

Haines *v.* Jeffreys, 9
Hall *v.* Wright, 26
Harrison *v.* Cage and Wife, 17, 22
Harvey *v.* Johnston, 22

Honor *v.* Bradshaw, 10
Howard *v.* Hooker, 25
Hunt *v* Matthews, 25
Hutton *v.* Mansell, 20
Irving *v.* Greenwood, 26

Jones *v.* James, 28

Kent *v.* Croot, 23
King *v.* Gillett, 28

Leeds *v.* Cook, 27

Milward *v.* Littlewood, 23
Mountacue *v.* Maxwell, 21

Palmer *v.* Wilder, 1
Pape *v.* Lister, 28
Paris *v.* Jackson, 27
Philpott *v.* Wallett, 17, 20

Short *v.* Stone, 22
Stretch *v.* Parker, cited in Dickison *v.* Holcroft
Sussex Peerage Case, 5

Taylor *v.* Pugh, 25

Wild *v.* Harris, 23
Wortley *v.* Watkinson, 10
Young *v.* Murphy, 26

Important Works

PUBLISHED BY

PICKERING & Co.,

196, Piccadilly, London, W.

ACROSTICS, a Hundred new, on Old Subjects, written by Two Poor Women, with a Preface by Mrs. GREVILLE. 12mo, 2s 6d

ACROSTICS.—Corn and Chaff, or Double Acrostics. Square 12mo, *frontispiece, cloth, gilt leaves*, 3s 6d

ALTAR SERVICE.—The Second Year of the Reign of King Edward VI.; the Altar Service of the Church of England for that Year, with that of the Third Year, 1549. Edited by W. J. BLEW. 16mo, 1s 6d

BALL (F. J.) S. Augustine upon Fasting Communion. 8vo, 6d.

——— Our Fears and our Confidence, a Sermon at S. Lawrence's, Reading, June 26th, 1877. 8vo, *sewed*, 6d

BAYNE (EMILY) Sighs of Hope. (Verse.) 12mo, 3s

BELANEY (R.) Mr. Gladstone Himself Reviewed and Analysed. Crown 8vo, *sewed*, 2s

BISHOPS.—Are the Bishops Mad? a Letter to the Rt. Hon. J. Bright, by a CLERGYMAN. 8vo, 1s

BLEW (W.) Privy Council Infallibility; the Mere Mistake in the Knightsbridge Judgment, excused by Mr. Fremantle, explained by Dr. Cardwell, exposed by WM. BLEW. 8vo, *sewed*, 1s

BONN RE-UNION.—Report of the Proceedings of the Re-Union Conference held at Bonn (1875), translated from German, with a Preface by CANON LIDDON, edited by M. MACCOLL. Crown 8vo, 3s 6d

BLAKE (WILLIAM) Poems: comprising Songs of Innocence and of Experience, together with Poetical Sketches and some Copyright Poems not in any other Edition. 12mo, 2s 6d

"The songs only require to be known to be loved with a tenderness and enthusiasm which it is not given to many poets to arouse."—*The Saturday Review.*

"The admirers of W. Blake as a poet—and they are rapidly increasing in number—owe much to Mr. Pickering for this reprint."—*Notes and Queries.*

——— Songs of Innocence and Experience, new edition, printed from the text of the Original Volumes published in 1789 and 1794, with Miscellaneous Poems, now first printed from the Author's MSS. 12mo, 4s

——— Poetical Sketches. Now first reprinted from the Original Edition of 1783, with a short Critical Preface. 12mo, 3s 6d

"A charming reprint of a most musical and dainty little book of songs. Turn where we will, throughout its hundred pages, we are sure to light on something that sparkles up into the light, as the sound of rippling water, the songs of birds, amid the breath of spring."—*The Standard.*

BOOKER (E.) Parthenia, a Drama. 12mo, 3s

BOURNE (V.) Poems, Latin and English, with Memoir and Notes by the Rev. J. MITFORD. 12mo, *printed with ornamental head and tail pieces, cloth,* 5s

Kept in various styles of binding.

"I love the memory of Vinny Bourne; I think him a better Latin poet than Tibullus, Propertius, Ausonius, or any of the writers in his way, except Ovid, and not at all inferior to him."—COWPER.

"Vincent Bourne's Latin translations in sweetness of numbers and elegant expression are at least equal to the originals, and scarce inferior to anything in Ovid or Tibullus."—DR. BEATTIE.

BRITTLEBANK (W.) Persia during the Famine of 1872, a Personal Narrative of Travel in the East. Crown 8vo, *frontispiece,* 7s 6d

"It is long since we have read a book of travel with so much satisfaction as that of Mr. Brittlebank's short narrative affords."—*The Examiner.*

"These pages evince the adventurous spirit of a true traveller."—*The Athenæum.*

BURIAL SERVICE.—The Order for the Burial of the Dead. 16mo, *printed in red and black from the sealed Copy of the Book of Common Prayer. In limp cloth, for the use of "Mourners," £2 10s per hundred.*

This little book can be made to answer the purpose of a memorial card by having the name of the departed person printed on the back of the title.

BURKE (U. R.) Spanish Salt: a Collection of all the Proverbs which are to be found in Don Quixote, with a literal English Translation, Notes and Introduction, by ULICK RALPH BURKE. 12mo, *cloth*, 3s 6d

"We cordially recommend this little daintily-printed volume to those who care to con in a concentrated form those wise saws which, in connection with Squire Sancho, the shield-bearer of the immortal Don, have made him and his master immortal. The translations are adequate and satisfactory, the work has evidently been a labour of love," &c., &c.—*The Athenæum.*

CALCOEN (CALICUT) Facsimile of a Dutch Narrative of the Second Voyage of Vasco da Gama to Calicut. Printed at Antwerp, *circa* 1504. with Introduction and Translation, by J. PH. BERJEAU. Small 4to, 5s

This book, unnoticed by both biographers and bibliographers, is in the British Museum. Although the name of the great navigator to India is not mentioned in it, the dates, events, and places recorded perfectly agree with the second voyage of Vasco de Gama round the Cape of Good Hope. This valuable narrative supplies a number of interesting details of the voyage which will be looked for in vain in Galvao, Ramusio, Castanheda, Faria, Barros, &c.

CAPEL (MONSIGNORE) and the Ritualists, a Review of a Recent Controversy, by a ENGLISH CATHOLIC. 8vo, *sewed*, 1s

CASWALL (E., *of the Oratory, Birmingham*) Poems and Hymns, original and translated, comprising Hymns for the Week, the Christian Seasons, and Saints' Days, translated from the Breviary, the Missal, and other sources: Original Meditative Pieces and Hymns: also upwards of Seventy Poems and Odes. 12mo, 5s.

From the above Poems and Hymns, originally published under the titles, Lyra Catholica, Masque of Angels, and in other works, now for the first time collected in one volume, it is not too much to say that the compilers of all the best known Hymn books during the last twenty years have borrowed, and in some cases very largely.

——— Tale of Tintern; a May Pageant. Second Edition, square 16mo, 2s

CASWALL (M. E.) Old Man's Review of his Past Life (a Fragment). Crown 8vo, *sewed*, 6d

CATECHISM, THE CHURCH, from the Book of Common Prayer; with Pictures and Explanations. Second Edition, 16mo, *with* 42 *cuts*, single copies, 1s 3d each; for distribution, 11s 6d per dozen

The above-named Manual has been read and approved by the Venerable Archdeacon Denison and other eminent clergy of the Church.

CEREMONIAL for Servers at Choral and Plain Celebrations of the Holy Eucharist. 18mo, 1s

——— Notes on Ceremonial, Sarum Use. 12mo, *cuts*, 4s 6d

"A very useful manual."—*The Church Times.*

Containing directions for the Celebrant and Ministers of the Altar and the Communion Service, with the Secreta translated from the Sarum Missal.

CERVANTES.—Sancho Panza's Proverbs, with others which occur in Don Quixote; with literal translation, Notes, and Introduction, by ULICK RALPH BURKE. 12mo, 3s; LARGE PAPER, crown 8vo, 8s 6d

CHAMBERS (J. D.) The Principles of Divine Worship, the Book of Common Prayer, Illustrated by references to the Sarum Rites and Ceremonies. *With numerous Illustrations, new edition, revised, with additions*, 4to, £1 1s

CHATELAIN (Chevalier de) L'Hostellerie des Sept Péchés Capitaux. Crown 8vo, *sewed*, 1s

——— (Le Chevalier de) Les Noces de la Lune. Crown 8vo, *sewed*, 1s

——— (Clara de) Photographs of Familiar Faces, edited by the CHEVALIER DE CHATELAIN. Crown 8vo, 5s

CHAUCER (G.) La Fleur et la Feuille; poëme avec le Texte Anglais en Regard, traduit en vers Français par le CHEVALIER DE CHATELAIN. 12mo, *cloth, gilt leaves*, 2s

"A very clever translation of Chaucer's 'Floure and the Leafe.'"—*English Journal of Education.*

——— Contes de Cantorbéry traduits en vers Français, par le CHEVALIER DE CHATLAIN. 3 vols, 12mo, *printed in the old style, portrait and cuts*, £1 5s

"There are evidences of great industry in it, and still more of sound judgment and good taste."—*Athenæum.*

CHRISTMAS CHIMES and New Year Rhymes, Serious and Comic, with a gallery of not-ables drawn and quartered in various verse, sense, and non-sense. Square 8vo, 3s

"There is badinage, sarcasm brilliant and telling, and wit at once scholarly, tender, but biting, on almost each page, such as will delight everybody who owns the power to appreciate the clever satire of an unusually original and pointed writer."—*Morning Post.*

CHURTON (E.) The Early English Church. New edition, 12mo, *maps and woodcuts*, 4s

CHURCH SERVICE, THE ADULT'S; being the Liturgy according to the use of the Church of England, for use in Church; with Homely Explanations, Forms of Self-Examination and Confession, &c., &c. Fourth Thousand, 16mo, *with* 22 *cuts*, 1s 3d each, 11s 6d per dozen.

"Our readers will be good enough to consider all that we have said of the first issue (the Child's Church Service) said also of this. We trust and believe that it will be very widely circulated."—*The Church Times.*

CHURCH SERVICE, THE CHILD'S; being the Liturgy according to the use of the Church of England, for use in Church, with Homely Explanations to be read at Home or at School. Third edition (6th thousand) 18mo, *with* 22 *cuts*, *in cloth*, 1s 3d each, 11s 6d per dozen nett.

"That admirable little manual."—*The Church Times.*

"This is really a miracle of beauty and cheapness! It is only 1*s.* 3*d.*, and each of the twenty-two woodcuts would be cheap at the money!"—*The Illustrated Review.*

CLAUDET (A., *F.R.S.*) A Memoir reprinted from "The Scientific Review." 8vo, *sewed*, 2s

COLERIDGE (S. T.) The Poetical and Dramatic Works of Samuel Taylor Coleridge. An entirely new edition, revised and enlarged, founded on that published in three volumes by the late WILLIAM PICKERING in 1834. 4 vols, fcap. 8vo, 30s

Large Paper Copies (*only* 100 *printed*) £2 12s 6d.

While containing everything which appeared in the earlier Edition, the present Re-issue includes a number of pieces of considerable value and interest, now for the first time collected.

CONSTABLE (HENRY) Diana, Spiritual Sonnets, and other Poems, now first collected, with some Account of the Author, by W. C. HAZLITT, and Notes by THOMAS PARK. 1859, crown 8vo, *only* 230 *copies printed*, 6s

——— Ditto, LARGE PAPER, *only* 20 *copies printed*, *uncut*, 15s

COX (F. E.) Hymns from the German, the Originals and Translations side by side, translated and edited by F. E. COX. Second edition, revised and enlarged 12mo, 5s

Hymns in the original German, accompanied with English verse translation, selected from Gerhard, Angelus, and several hundred different collections, most of the Hymns were pointed out as "National Treasures" by the learned and famous collector of German Hymns, Baron Bunsen, on whose authority the names and dates of the authors are given.

COPINGER (W. A.) A Testimony of Antiquity, showing the Ancient Faith in the Church of England touching the Sacrament of the Body and Blood of Christ. 18mo, 1s

DANIEL (GEORGE) Love's Last Labour Not Lost. 12mo, pp. 300, *cloth*, 7s 6d

Contents:—Recollections of Charles Lamb; Samuel Johnson; Father Christmas; The Loving Cup and Horace Walpole; New Year's Eve; The Presumed Disinterment of Milton; Moorfields in the Olden Time; Dreams; Recollections of Siddons and John Kemble; Tom Durfey; Old Ballads; Robert Cruikshank; A Book of Fools, etc., etc.

DAWSON (A.) Theory of Gravity, and of the Solar Process. 8vo, *sewed*, 6d

——— English Landscape Art in the year 1877. Crown 8vo, 1s

DE VERE (SIR AUBREY) Julian the Apostate, the Duke of Mercia; two Dramas. 1 vol, 12mo, 8s 6d

——— Irish Odes and other Poems. Crown 8vo, 6s

——— Sonnets. New edition, 12mo, 3s 6d

DORE (J. R.) Old Bibles; or an Account of the various Versions of the English Bible. Crown 8vo, 2s 6d

"Mr. Dore in the volume before us has endeavoured to give a plain, unvarnished account of the English Bible. In the account of Tyndale's work Mr. Dore is careful and succinct. . . . It is beautifully printed." —*Saturday Review.*

DUNN (REV. JAMES) The Honesty of our Position, a Paper read before the Clifton Branch of the E. C. U. 8vo, *sewed*, 6d

EDEN (ROBERT) Some Thoughts on the Inspiration of the Holy Scriptures. 12mo, pp. 294, *handsomely printed in the old style*, 5s

ELLIS (EDWARD) The Two Ysondes and other Verses. Crown 8vo, 2s 6d

EWALD (ALEX. CHAS.) The Public Records, a Brief Handbook to the National Archives, by ALEX. CHAS. EWALD, one of the Senior Clerks of Her Majesty's Public Records. 8vo, 9s

This book is an Alphabetical Index of the Principal Matters contained in the Public Records, with a reference directing the student of history under what heading they may be found, and a Glossary of Words to be found in the Public Records, with a Prefatory Essay on the most remarkable of these Records.

"For the students of the Public Records and the National Archives. Mr. Ewald's New Hand-Book will be found extremely useful. . . ."—*Westminste Review.*

ELLIS (JOSEPH) Meletæ: Poems by Joseph Ellis. Cr. 8vo, 6s

——— Cæsar in Egypt, Costanza, and other Poems. Cr 8vo, 9s

"Cæsar in Egypt" comprises the history of the Alexandrine War, also the Journey of Caius Julius Cæsar with Queen Cleopatra up the Nile.

FANSHAWE (C. M.) The Literary Remains of Catherine Maria Fanshawe, with Notes, by the late Rev. WM. HARNESS. Fcap. 8vo, *only* 250 *printed*, 3s

FISHER (RICHARD TROTT) Lays of Ancient Babyland, to which are added divers small Histories not known to the Ancients. Square 12mo, *printed in the old style, with head and grotesque tail pieces, cloth, gilt leaves*, 4s 6d

Suitable for a Christmas present to a child, containing many of the old popular stories versified, with the addition of several tales.

——— The Travellers, an Argument in three parts—1. The Night Watch; 2. The Day Watch; 3. The Repose. Crown 8vo, 5s

——— The Minster, with some common Flowers picked in the Close. 12mo, 4s 6d

"Contains many good verses carefully written."—*Athenæum.*

——— Rakings over Many Seasons. Crown 8vo, *cloth*, 8s 6d

FONBLANQUE (E. BARRINGTON) Cluck Cluck; a Fairy Tale, *with* 11 *illustrations by T. W. Y.* Sq. 8vo, 3s 6d

——— Account of a New System of Elementary Teaching. 8vo, 1s

FRANKUM (R.) The Bee and the Wasp, a Fable in Verse. Square 12mo, *with etchings by George Cruikshank, executed in early life and in his best manner*, 5s

——— The Same. Square 12mo, with the plates on INDIA PAPER, *only fifty copies so printed*, 7s 6d

FRERE (J. H.) The Works in Prose and Verse of the Right Honourable John Hookham Frere. Now first collected with a Memoir by W. E. and Sir BARTLE FRERE. Second edition, 3 vols, crown 8vo, *with two portraits engraved by C. H. Jeens*, 24s

——— LARGE PAPER, 3 vols, 8vo, £2 2s

FULLER (MORRIS, *M.A.*) A Voice in the Wilderness, being Sermons preached at Dartmoor. Crown 8vo, 7s 6d

——— Our Established Church, its History, Philosophy, Advantages, and Claims. Crown 8vo,

FULLER (T.) David's Hainous Sinne, Heartie Repentance, Heavie Punishment. Crown 8vo, 7s 6d

——— Life, with Notices of his Books, his Kinsmen, and his Friends, by J. EGLINGTON BAILEY. Thick 8vo, pp. 826, *numerous illustrations*, £1 5s

"If ever there was an amusing writer in this world, the facetious Thomas Fuller was one. There was in him a combination of those qualities which minister to our entertainment, such as few have possessed in an equal degree."—*Retrospective Review.*

GUILEVILLE (GUILLAUME DE) The Ancient Poem entitled "Le Pèlerinage de l'Homme," by GUILLAUME DE GUILEVILLE (1330), compared with "The Pilgrim's Progress" of JOHN BUNYAN, with Illustrations, and an Appendix containing the English Version, by JOHN LYDGATE. Crown 4to, *with numerous illustrations*, 15s

"A volume full of deep interest to the admirers of John Bunyan, and of no small value in illustrating the history of religious allegories."—*Notes and Queries.*

——— A Modern Prose Translation of the Ancient Poem of G. de Guileville, entitled the Pylgrymage of Man, with Appendix. Crown 4to, *twenty-six illustrations*, 5s

——— The Booke of the Pylgrymage of the Sowle, translated from the French, printed by Caxton, 1483, *with illustrations taken from a MS. copy in the British Museum*, edited by K. I. CUST. Crown 4to, *coloured plates*, 15s

HOBSON (W. F.) Church Innovations, an Examination and Plea for Tolerance. 8vo, 1s

——— Letter to the Right Hon. Montague Bernard. 12mo, 4d

——— The Ridsdale Judgement on Vestments. 12mo, 6d.

HOME (F. WYVILLE) Songs of a Wayfarer. Extra fcap, 7s 6d

HORE (P. H.) Explanation of Ancient Terms and Measures of Land, with some Account of Old Tenures. 8vo, 4s

HUGO (T.) Prayers before and after a Chapter of Order of S. John of Jerusalem in England. Crown 8vo, 2s 6d

——— LARGE PAPER, 4to, *only* 12 *so printed*, 10s 6d

HURCOMB (F. B.) Sermons with Memoir by F. ARNOLD. 8vo, 10s 6d

HYETT (W. H.) Flowers of the South from the Hortus Siccus of an old Collector. 4to, 12s

JESSE (GEORGE R., *Author of "Researches into the History of the British Dog," &c.*) Unabridged Evidence given before the Royal Commission on Vivisection, on the 1st and 6th November, and 20th December, 1875. Crown 8vo, 2s 6d

N.B.—The Blue Book Report, issued by the Royal Commission, presents the above evidence in a mutilated condition only.

KARSLAKE (W. H., *Preacher at Lincoln's Inn, Vicar of Westcott, late Fellow and Tutor of Merton College, Oxford*) The Litany of the English Church considered in its History, its Plan, and the Manner in which it is intended to be used. 8vo, 8s 6d

KEBLE (J.) The Christian Year; Thoughts in Verse for the Sundays and Holy Days throughout the Year. 8vo, *beautifully printed*, 9s

KEN (BISHOP) Christian Year; or Hymns and Poems for the Holy Days and Festivals of the Church. 8vo, *pp.* 478, *every page surrounded by an elaborate woodcut border in the style of Geoffrey Tory.* £1 1s

These borders are entirely new, never having been used in any other work. They are larger and more elaborate than those used in the "Elizabeth Prayer," or the other bordered Prayer Book.

Bishop Ken was the author of "Awake my soul and with the Sun" and of "Glory to Thee, my God, this night."

"Bishop Ken's 'Christian Year,' published by Mr. Pickering, is an exquisite edition of a book which would have been welcome in any shape."—*Times.*

——— Christian Year; Hymns and Poems for the Festivals and Holidays of the Church. Third edition, fcap. 8vo, 6s, *and may be had in various bindings*

KERSHAW (S. W., *Librarian of Lambeth Library*) The Art Treasures of Lambeth Library: a Description of the Illuminated MSS. and Illustrated Books, with Outline Illustrations from the most remarkable MSS. 8vo, *uniform with Maitland's Catalogues of the Early Printed Books, only* 225 *copies printed*, 14s

——— 4to size, *on hand-made paper, plates on India paper, half Roxburghe morocco, only* 25 *copies printed*, £2 12s 6d

LAMB (CHARLES AND MARY) Poetry for Children, Edited and Prefaced by R. H. SHEPHERD. 12mo, 106 *pp. with woodcut initials, head, and tail-pieces, a pretty volume*, 3s 6d

"These delightful poems for children, in spite of their extraordinary merit, and marked superiority to other productions of a similar class, seem altogether to have escaped the notices of modern readers, and even of those lovers of Lamb's genius who have during late years rescued from oblivion all the waifs and strays of which the authorship is traceable to him."

LENDRUM (REV. ALEXANDER) The Reformation and Deformation, their Principles and Results as Affecting Doctrine, Worship, and Discipline, a Letter to the Archbishop of Canterbury. Thick 8vo, 15s

LONGFELLOW (HENRY WADSWORTH) Early Poems now first collected and edited by R. H. SHEPHERD. 12mo, 3s

"Seldom, if ever, have verses fuller of rich promise or of actual fulfilment been composed by a boy of seventeen."—*Examiner.*

LOVE'S TRIUMPH: a Play. 12mo, 3s 6d

"A light dramatic five-act play, cast rather in the style of thought and expression which belong to the age succeeding that of Shakespeare. The author is evidently a man of poetic taste, as well as a great admirer of those golden days and golden writers, and tells his light and pleasant ove-story in a quiet and simple fashion."—*The Morning Herald.*

LYRICS OF LIGHT AND LIFE.—Original Poems, by Dr. John Henry Newman, Alexander Lord Bishop of Derry, Miss Christiana G. Rossetti, Rev. Gerard Moultrie, Rev. J. S. B. Monsell, Rev. W. J. Blew, Aubrey de Vere, Rev. H. N. Oxenham, Rev. Ed. Caswall, &c., &c., edited by Dr. F. G. Lee. Second edition, revised and enlarged, *handsomely printed with head and tail-pieces*, fcap. 8vo, 6s

——— LARGE PAPER. Crown 8vo, *printed on hand-made paper, only* 24 *so printed*, £1 1s

MACGILL (HAMILTON M., *D.D.*) Songs of the Christian Creed and Life, selected from Eighteen Centuries. Crown 8vo, 7s

The representative hymns included in this volume range from the Second Century to the Nineteenth. In each case the original and a translation are given, and where the hymn was originally in English, a Latin rendering is given. A few are Greek and English; all the others have the Latin and English side by side. Among the authors may be enumerated Clement of Alexandria, Hilary, Ambrose, Augustine, Gregory of Nazianzus, Anselm, Thomas A. Kempis, Xavier, Watts. Toplady, Cowper, Heber, Keble, Newman, Bonar, and many others.

MACKENZIE (J.) An Appeal for a New Nation. 8vo, 3d

——— Mainoc Evline, and other Poems. 12mo, 5s

MANNING (CARDINAL) and History: An Answer to the Cardinal's Appeal to the History of the Venerable Bede, by TWO PRIESTS. Sewed, 1s 6d

MANUEL (PRINCE DON JUAN, *the Spanish Boccaccio*) Count Lucanor, or the Fifty Pleasant Stories of Patronio, written by the Prince Don Juan Manuel, A.D. 1335—1347, and now first translated from the Spanish into English, by James York, M.D. 12mo (*pp.* xvi. 246), 6s

"This curious collection of 'Pleasant Stories,' composed a century before the invention of printing, has already been translated into French and German, and was well worth putting into an English dress. . . . In his brief account of Don Juan Manuel, Dr. James York has told the readers of 'Fifty Pleasant Stories' as much, perhaps, as they will require to know of them. . . . The notes explanatory or illustrative of the stories are, as notes should be, brief, instructive, and to the point."—*The Saturday Review.*

MARTYN (REV. THOMAS, M.A.) Greek Testament Studies; or, a Revision of the Translation for Private Use. 8vo, 2s 6d

MARY (QUEEN) Two Plays by Dekker, Webster, and by Thos. Heywood, newly edited, with Essay on the Relation of the Old and Modern Dramas in this Chapter of History, by W. J. BLEW. 12mo, 4s 6d

MILTON'S PARADISE LOST, in Ten Books, the text exactly reproduced from the First Edition of 1667, with Appendix, containing the additions made in later Issues, and a Monograph on the original publication of the Poem. Crown 4to, 18s

——— LARGE PAPER, £1 4s

The reproduction of Milton's "Paradise Lost" has an interest superior to that of most reprints, as no edition subsequent to the first has preserved the system of emphasis adopted by Milton.

NEWMAN (DR. JOHN HENRY) The Arians of the Fourth Century, third edition. Crown 8vo, 6s

——— Callista ; a Sketch of the Third Century. Crown 8vo, 5s 6d

——— Certain Difficulties felt by Anglicans in Catholic Teaching Considered, in a Letter addressed to the Rev. E. B. Pusey, D.D., on occasion of his Eirenicon of 1864 ; and in a Letter addressed to the Duke of Norfolk on occasion of Mr. Gladstone's Expostulation of 1874. Crown 8vo, 5s 6d

——— Discussions, 6s

Containing : I.--The celebrated "Letters of Catholicus" on Education (The Tamworth Reading Room). II.—An Internal Argument for Christianity. III.—On English Jealousy of "The Army" and "The Church." IV.—On the Relation between Scripture and the Catholic Creed, &c.

——— The Miscellaneous and Critical Essays of John Henry Newman (formerly Fellow of Oriel College, Oxford, now D.D., and of the Oratory, Birmingham), now first collected ; comprising Articles on Poetical, Historical, and Biographical subjects, written 1829—71. 2 vols, crown 8vo, 12s

I.—The Nature of Poetry. II.—Rationalism. III.—Fall of De la Mennais. IV.--Palmer's View of the Church. V.—Epistles of Saint Ignatius. VI.—Anglican Prospects. VII.—The Anglo-American Church. VIII.—The Countess of Huntingdon. IX.—Catholicity of Anglican Church. X.—Antichrist. XI.—Milman's View of Christianity. XII.—The Reformation of the Eleventh Century. XIII.—Private Judgment. XIV.—John Davison. XV.—John Keble.

——— Historical Sketches. Vol. I., 6s

Containing : I.—The History of the Turks in their relation to Europe. II.—Life of Apollonius of Tyana. III.—The Personal and Literary Character of Cicero. IV.—Of Primitive Christianity.

——— Historical Sketches. Vol. II., 6s

Containing : I.—A Sketch of the Life of Theodoret (*now first printed*). II.—A Sketch of the Life of St. Chrysostom. III.—Of the Mission of St. Benedict. IV.—Of the Benedictine Schools. V.—The Church of the Fathers, containing Sketches of St. Basil, St. Gregory, St. Anthony, St. Augustine, Demetrius, and St. Martin.

——— Historical Sketches. Vol. III., 6s

Containing : I.—A Sketch of the Rise and Progress of Universities. II.—An Essay on the Northmen and Normans in England and Ireland. III.—A Review of Mediæval Oxford. IV.—An Historical Sketch of the Convocation of Canterbury.

NEWMAN (DR. JOHN HENRY) An Essay on the Development of Christian Doctrine, new edition, revised by the author. Crown 8vo, 6s

——— Loss and Gain; the Story of a Convert, sixth edition, with a New Advertisement. Crown 8vo, *pp.* 442, 5s 6d

——— On Miracles.—Two Essays on Scripture Miracles, and on Ecclesiastical. Crown 8vo, *pp.* 406, 6s

——— Tracts, Theological and Ecclesiastical, Crown 8vo, 8s

Containing: I.—Dissertatiunculæ. II.—The Doctrinal Causes of Arianism. III.—Apollonarianism. IV.—St. Cyril's Formula. V.—Ordo de Tempore. VI.—On the various revisions of the Douay Versions of Scripture.

Several of the above have NEVER BEEN PREVIOUSLY PRINTED, others are from periodicals now inaccessible.

——— The Via Media of the Anglican Church. Vol. I. containing the whole of the "Lectures on the Prophetical Office of the Church Viewed Relatively to Romanism and Popular Protestantism," as published in 1837; with New Preface and Notes [1877]. Vol. II., containing Occasional Letters and Tracts written between 1830 and 1841. 2 vols, crown 8vo, 6s each

——— Idea of a University, Considered in Nine Discourses, Occasional Lectures, and Essays. Crown 8vo, *uniform in cloth* (*double volume*), 7s

NOWELL (T. W.) Sacrifice or no Sacrifice? John Wesley an Unconscious Romanist: Notes on a Suggested Alteration in the English Communion Office. 8vo, sewed, 2s

PANIZZI (ANTONIO) Chi Era Francesco da Bologna? Seconda edizione con nuova appendice. 12mo, *only* 265 *copies printed, with five facsimiles of the types used by Francesco da Bologna*, 2s 6d

——— LARGE HAND-MADE PAPER, *only* 12 *printed*, 10s 6d

This essay is written to establish the identity of Francesco da Bologna, who designed and cut the Aldine cursive type, with the celebrated sculptor and artist Francesco Raibolini, usually called Il Francia, the contemporary of Leonardo da Vinci, Rafaelle, and Michael Angelo.

PAYNE (JOHN) The Masque of Shadows, and other Poems. Fcap. 8vo, *cloth*, 7s

——— Intaglios, Sonnets. 12mo, *finely printed with head and tail-pieces, ornamented with initial letters*, 3s 6d

"Excellent scholar's work in poetry. The spirit of his work is much akin to the earlier writings of Mr. Rossetti and Mr. Morris."—*The Academy.*

——— Lautrec, a Poem. 12mo

PEARCE (M.) Philip of Konigsmarkt, and Poems. 12mo, 8s 6d

POCOCK (N.) The Principles of the Reformation shown to be in Contradiction to the Book of Common Prayer. 8vo, 1s

——— Recovery from the Principles of the Reformation. 8vo, 1s

POETS.—Birthdays with the Poets, a birthday book of quotations from the poets. Square 16mo, *ornamented cloth, gilt leaves*, 3s

PRAYER, A Service of, A Litany and an Office of the Holy Communion. 16mo, 1s

PUNCHARD (E. G.) King Saul and other Poems. 12mo, 2s 6d

——— Seven Times a Day: a Manual of the Hours of Prayer, with Notes thereon. 18mo, 1s

RALEIGH (SIR WALTER) Poems, edited by J. Hannah. 12mo, *handsomely printed, with ornamental head and tail-pieces*, 5s

SANDYS (R. H.) In the Beginning, Remarks on Certain Modern Views of the Creation. 8vo. Part I. 1s; Part II. 1s 6d; Part III. 1s 6d; Part IV. 1s 6d

SCOTT (PATRICK) Christianity and a Personal Devil. Second Edition, revised and re-arranged. 12mo, 5s

"We think every impartial inquirer will agree with Mr. Scott."—*Pall Mall Gazette.*

SHIPLEY (OBBY) Ought we to obey the New Court created by the Public Worship Regulation Act? Second Edition. 8vo, 6d

SHIRLEY (E. P.) A History of the County of Monaghan. Part I. Folio, *with numerous Illustrations, Antiquarian and Heraldic, only* 250 *copies printed*, 12s

——— Part II. 16s

——— Part III. 12s

——— Part IV. *In the Press.*

SINGLETON (LUCY) Some Statistics to Show the Necessity for more Bishops and Clergy. Royal 8vo, *sewed*, 1s

SKETCHES OF NONCONFORMITY chiefly taken from the Old Testament. 8vo, *sewed*, 6d

TENNYSONIANA.—Notes Critical and Bibliographical on the Works of Alfred Tennyson, D.C.L., Poet Laureate, Second Edition, revised and enlarged. 12mo

TONES, Sad, for Sick Times, by the Author of "Hints of Horace." Crown 8vo, 3s

TONDINI (C.) Anglicanism, Old Catholicism, and the Union of the Christian Episcopal Churches. 8vo, *sewed*, 1s 6d

——— The Future of the Russian Church. 8vo, *sewed*, 1s

TOWNSEND.—Sunday Utterances of Prayer and Praise. Square 18mo, *sewed*, 1s

TRACTS.—Privy Council. 4s 6d

No. 1—Dr. Stephens on the Ornaments Rubric, Dedicated to His Grace the ARCHBISHOP OF YORK, 1s

No. 2—The Case of "The Seven Bishops"—The Case of "The 4,700," dedicated to the LORD BISHOP OF LONDON, 1s

No. 3—A Handy Book of Privy Council Law.—I. Ecclesiastical Cases.—II. Patent Cases.—Dedicated to the Right Honourable BARON HATHERLEY, royal 8vo, *pp.* 75, 1s 6d

"This is No. III. of a series of which the first two are already well known, and duly appreciated wherever they are known."—*The Church Review.*

TRELAWNY (E. J.) Records of Shelley, Byron, and the Author, New edition, greatly enlarged. 2 vols, crown 8vo, *with portraits and plates*, 12s

WACE (H.) Christianity and Morality: being the Boyle Lectures for 1874-5, by Henry Wace, M.A., Chaplain of Lincoln's Inn, Professor of Ecclesiastical History, King's College, London, Bampton Lecturer for 1879 in the Univ. of Oxford, &c. Fourth Edition. Crown 8vo, 6s

WALKER (C.) An Order for Matins and Evensong, and the Celebration of the Holy Communion, commonly called the Mass, chiefly after the First Prayer Book of Edward VI. 16mo, 2s

WALTON (IZAAK) Reliquiæ Waltonianæ: Inedited Remains of Izaak Walton, Author of "The Complete Angler," edited by R. H. Shepherd. 12mo, 6s

WARBURTON (R. E. EGERTON) Poems and Epigrams. Crown 8vo, *only 250 printed*, 7s 6d

——— Hunting Songs, Sixth Edition. 12mo, *with vignette title, uncut*, 5s

"We have to thank Mr. Egerton Warburton, a sportsman of the best stamp, for the agreeable collection of hunting songs before us. They are fresh, lively, not deficient in point, and frequently characterized by a healthy and genial humour."—*Vide review of two columns in the "Saturday Review" of Jan. 24, 1874.*

WILBERFORCE (R. T.) The Five Empires; an Outline of Ancient History, Fifteenth Edition. 12mo, *maps and plates*, 3s 6d

WINSCOM (CAVE) Tsoé, and other Poems. 12mo, 3s 6d

——— Waves and Caves, and other Poems 12mo, 3s 6d

——— Camden, and other Poems. 12mo, 3s 6d

PICKERING & CO.,

196, PICCADILLY, LONDON, W.